

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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CINEMA PATENTS COMPANY, INC., a corporation,  
Appellant,

vs.

COLUMBIA PICTURES CORPORATION, a corpora-  
tion, and WILLIAM HORSLEY FILM LABORA-  
TORIES, INC., a corporation,

Appellees.

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Transcript of Record.

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Upon Appeal from the United States District Court for the Southern  
District of California, Central Division.

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FILED

MAY 25 1932

PAUL P. O'BRIEN,  
CLERK



No.

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Circuit Court of Appeals  
For the Ninth Circuit.

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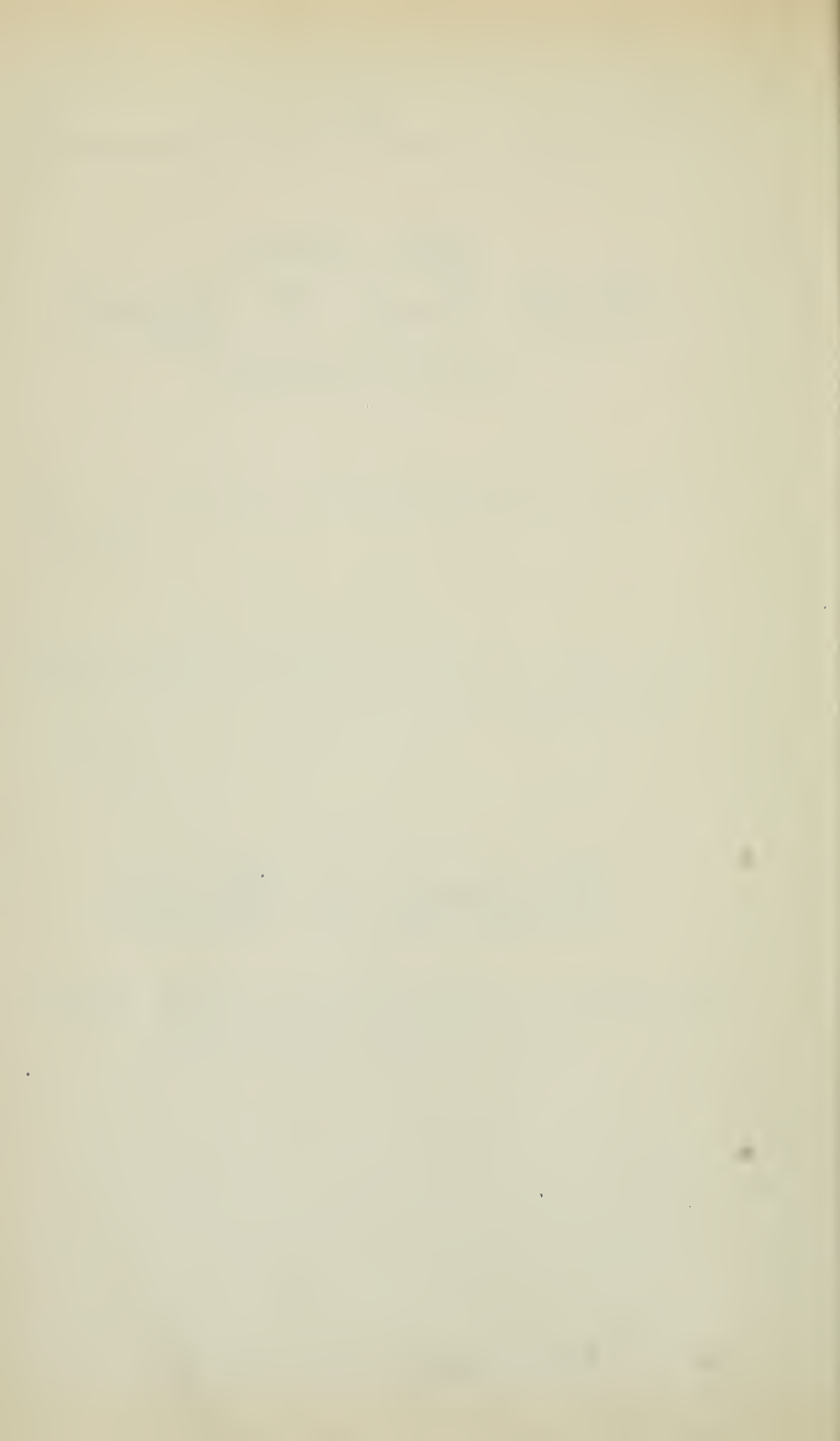
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italic; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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## CITATION

BY THE HONORABLE WILLIAM P. JAMES, ONE OF THE UNITED STATES DISTRICT JUDGES FOR THE SOUTHERN DISTRICT OF CALIFORNIA IN THE NINTH CIRCUIT.

TO COLUMBIA PICTURES CORPORATION AND WILLIAM HORSLEY FILM LABORATORIES, INC. GREETING:

YOU ARE HEREBY CITED and admonished to be and appear before a United States Circuit Court of Appeals for the Ninth Circuit to be holden in the City of San Francisco in the Circuit above named on the 27th day of April, 1932, pursuant to an Appeal filed in the Clerk's Office of the District Court of the United States for the Southern District of California, wherein Cinema Patents Company, Inc. is appellant, and you are appellees, to show cause, if any there be, why the Decree in said Appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

GIVEN UNDER MY HAND in the City of Los Angeles, in the Circuit above named, this 29 day of March, in the year of our Lord One Thousand Nine Hundred and Thirty-two and of the Independence of the United States the One Hundred and Fifty-sixth.

Wm P. James

United States District Judge for the Southern District of California in the Ninth Circuit.

[Endorsed]: Received copy of the within Citation this 30th day of March, 1932 Frank L A Graham Attorney for Defendants.

Filed Mar 30 1932 R. S. Zimmerman, Clerk By Theodore Hocke, Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

CINEMA PATENTS COMPANY,	)	
INC., a corporation,	)	
	)	
	)	Plaintiff,
	)	
vs.	)	
	)	EQUITY NO.
	)	R-83-J
COLUMBIA PICTURES CORPO-	)	
RATION, a corporation, and WM.	)	
HORSLEY FILM LABORA-	)	
TORIES, INC., a corporation,	)	
	)	
	)	Defendants

BILL OF COMPLAINT FOR INFRINGEMENT OF  
PATENTS NO. 1,177,697 AND NO. 1,281,711

Now comes plaintiff above named, and complaining of  
the defendants above named, alleges as follows:

I.

That plaintiff, Cinema Patents Company, Inc. is a cor-  
poration duly organized and existing under and by virtue  
of the laws of the State of New York, and a citizen of  
that state, having its principal office and place of business  
in the City of New York, County of New York, and  
State of New York.

II.

That defendant Columbia Pictures Corporation is a  
corporation, duly organized and existing under and by  
virtue of the laws of the State of New York, and a citizen  
of that State, having an office and a regular and estab-  
lished place of business in the City of Los Angeles, County

of Los Angeles and State of California; that the defendant Wm. Horsley Film Laboratories, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of California, and a citizen of that state, having its office and principal place of business in the City of Los Angeles, County of Los Angeles and State of California.

## III.

That this is a suit arising under the patent laws of the United States, and the court has jurisdiction thereunder.

## IV.

That prior to the 17th day of February, 1909, Leon Gaumont, a citizen of the French Republic, and a resident of Paris, France, was the original, first and sole inventor of a certain new and useful method and apparatus for DEVELOPING, FIXING, TONING, AND OTHERWISE TREATING PHOTOGRAPHIC FILMS AND PRINTS, fully described in letters patent No. 1,177,697, hereinafter mentioned, which invention had not been known or used by others in this country before his invention thereof, and had not been patented or described in any printed publication in this or any other foreign country before his invention thereof, or for more than two years prior to his application for United States Letters Patent therefor, and not in public use or on sale in this country for more than two years prior to his said application for said United States Letters Patent, and not abandoned, and not first patented or caused to be patented by said inventor, or his legal representatives or assigns in any foreign country upon an application filed more than twelve months prior to the filing of his said application for patent in this country.

## V.

That on the 17th day of February, 1909, the said Leon Gaumont, as the inventor of said invention, applied for letters patent of the United States thereon, and having complied with all the laws, rules and regulations of the United States, concerning such application, such proceedings were had, that on the 4th day of April, 1916, letters patent of, and in the name of the United States of America, for said invention, under seal of the Patent Office, signed by the Commissioner of Patents, in due form of law, and numbered 1,177,697, were issued to said Leon Gaumont, for said invention, whereby there was granted and secured to said Leon Gaumont, his successors or assigns, for seventeen years from the date of said patent, the exclusive right of making, using and vending to others to be used, the invention and improvements described in said letters patent.

## VI.

That by instruments in writing dated respectively, November 22nd, 1926, January 3rd, 1929 and April 11th, 1930, duly executed and delivered and duly recorded in the United States Patent Office, the entire right, title and interest in the said invention and said patent, together with any and all claims and demands both in law and in equity for infringement of said letters patent, was assigned by the said Leon Gaumont to Famous Players Lasky Corporation, a corporation, organized and existing under and by virtue of the laws of the State of New York, and by said Famous Players Lasky Corporation to Spoor-Thompson Machine Company, a corporation organized and existing under and by virtue of the laws of the State of Illinois, the said Famous Players Lasky Corporation

having, between the time of acquiring title, and assigning title, as aforesaid, duly, and in accordance with the law, changed its name from Famous Players Lasky Corporation to Paramount Famous Lasky Corporation, and by said Spoor-Thompson Machine Company to Cinema Patents Company, Inc., plaintiff herein; and Cinema Patents Company, Inc., plaintiff, has been, ever since April 11th, 1930, and now is the owner of the entire right, title and interest in and to the said invention and said letters patent No. 1,177,697, and of any and all claims and demands, both in law and in equity for infringement of said letters patent.

#### VII.

That prior to September 15, 1915, Frederick B. Thompson, a citizen of the United States, and a then resident of Chicago, Illinois, was the original, first and sole inventor of a certain new and useful PHOTOGRAPHIC FILM TREATING APPARATUS, fully described in letters patent No. 1,281,711, hereinafter mentioned, which invention had not been known or used by others in this country before his invention thereof, and had not been patented or described in any printed publication in this or any other foreign country before his invention thereof, or for more than two years prior to his application for United States Letters Patent therefor, and not in public use or on sale in this country for more than two years prior to his said application for said United States letters patent and not first patented or caused to be patented by said inventor, or his legal representatives or assigns in any foreign country upon an application filed more than twelve months prior to the filing of his said application for patent in this country.

## VIII.

That on the 15th day of September, 1915, the said Frederick B. Thompson, as the inventor of said invention, applied for letters patent of the United States thereon, and having complied with all the laws, rules and regulations of the United States, concerning such application, such proceedings were had, that on the 15th day of October, 1918 letters patent of, and in the name of the United States of America, for said invention, under seal of the Patent Office, signed by the Commissioner of Patents, in due form of law, and numbered 1,281,711 were issued to said Frederick B. Thompson, for said invention, whereby there was granted and secured to said Frederick B. Thompson, his successors or assigns, for seventeen years from the date of said patent, the exclusive right of making, using and vending to others to be used, the invention and improvements described in said letters patent.

## IX.

That on or about the 10th day of December, 1928, by final consent decree, signed and entered in and by the United States District Court for the Southern District of California, Southern Division, in the cause of George K. Spoor and Spoor-Thompson Machine Company, a corporation, plaintiffs, vs. Frederick B. Thompson, et al, defendants, in Equity No. L-38, a certified copy of which decree was duly recorded in the United States Patent Office, it was ordered, adjudged and decreed that Spoor-Thompson Machine Co., an Illinois corporation was then the owner of the entire right, title and interest in and to said letters patent No. 1,281,711, and any and all claims and demands, both at law or in equity, for infringement of said letters patent; and by an instrument in writing,

dated December 20, 1928, duly executed and delivered, and duly recorded in the United States Patent Office, certain persons and corporations, to wit, Frederick B. Thompson, Grace Seine Thompson, C. C. Mangelheimer, Mangelheimer Securities Corporation, a corporation, H. T. James and Bennett Film Laboratories, a corporation, theretofore *theretofore* claiming rights to the said invention, and said patent therefor, to wit, No. 1,281,711, which rights were adjudicated and determined in the aforesaid action in equity, assigned to Spoor-Thompson Machine Co., an Illinois corporation, their and each of their right, title and interest, which they had, or claimed to have had in said invention, and said patent therefor, together with any and all claims and demands, both at law and in equity, for infringement of said letters patent; that by an instrument in writing, dated the 11th day of April, 1930, duly executed and delivered, and duly recorded in the United States Patent Office, the said Spoor-Thompson Machine Co., a corporation, assigned to Cinema Patents Company, Inc., plaintiff, the entire right, title and interest in and to said invention, and patent therefor, No. 1,281,711, together with any and all claims and demands, both in law and in equity, for infringement of said letters patent; and the Cinema Patents Company, Inc., plaintiff, has been, since the 11th day of April, 1930, and now is, the owner of the entire right, title and interest in and to said letters patent No. 1,281,711, and any and all claims and demands, both at law and in equity, for infringement of said letters patent.

## X.

That the inventions patented in and by said letters patent No. 1,177,697 and No. 1,128,711 are capable of



conjoint use, and have been so used by the defendants, and each of them in infringement thereof.

#### XI.

That the inventions patented in and by said letters patent No. 1,177,697 and No. 1,281,711, and each of them, have been, and are, of great value and commercial utility, and the public in the United States of America and throughout the world, has generally recognized and acquiesced in the utility, value and patentability of said inventions, and each of them, and has recognized and acquiesced in the validity of said letters patents, and the exclusive rights of the plaintiff thereunder.

#### XII

That the defendants, and each of them, jointly and severally, or severally, as plaintiff is informed and believes, and therefore alleges, have directly and/or contributorily, infringed the said letters patents, and each of them, within the Central Division of the Southern District of California, and possibly elsewhere, since the issuance of said letters patents, and prior to the commencement of this suit, by manufacturing and using or causing to be manufactured and used, without the license or consent of plaintiff, apparatus containing the inventions of said letters patents and the claims thereof, and/or by employing, or causing to be employed without the license or consent of plaintiff, the method or process embodying one of the inventions of said letters patent No. 1,177,697, and claim 1 thereof.

#### XIII

That the defendants, and each of them, have been duly notified in writing of the said letters patents, and of their infringement thereof, but nevertheless, as plaintiff is

informed and believes, and therefore alleges, defendants, and each of them, have wilfully and intentionally continued and still continue and threaten further to continue to infringe the same.

## XIV

That by reason of said infringing acts, the defendants have profited, and the plaintiff has been irreparably damaged.

WHEREFORE, plaintiff prays:

1. That the defendants and each of them, their officers, agents, servants, employees and attorneys, respectively, or those in active concert or participating with them be provisionally during the pendency of this cause, and permanently enjoined from further infringing upon plaintiff's said Letters Patent, and upon the rights of plaintiff thereunder.

2. That the defendants and each of them be required to account and pay to the plaintiff defendants' profits and plaintiff's damages and a sum in excess thereof, not to exceed three times the actual damages and profits.

3. That the defendants and each of them be required to pay the costs and disbursements of plaintiff in this suit.

4. That plaintiff have such other and further relief in the premises as to the Court may appear proper and *aggreable* to equity.

CINEMA PATENTS COMPANY, INC.  
a corporation,

Plaintiff,

By Herbert A Huebner

Attorney for Plaintiff

Los Angeles, California,

May 29, 1930

VERIFICATION

STATE OF NEW YORK    )  
                                  ) SS:  
COUNTY OF NEW YORK )

M. J. SIEGEL, being duly sworn, deposes and says that he is the president of Cinema Patents Company, Inc., plaintiff; that he has read the foregoing Bill of Complaint, and knows the contents thereof; that the same is true to his own knowledge, except as to those matters stated upon information and belief, and as to those matters he believes it to be true.

M J Siegel

Sworn to before me this 26 day of May, 1930

[Seal]

Edith M. Coltart

Notary Public New York County

NOTARY PUBLIC, New York County

N. Y. County Clk.'s No. 164, Reg. No. 2C181

Commission Expires Mar. 30, 1932

State of New York,    )  
County of New York, ) ss.:           No. 21973 Series C

I, DANIEL E. FINN, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, having a seal, DO HEREBY CERTIFY, That

Edith M. Coltart

whose name is subscribed to the deposition or certificate of the proof or acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such deposition, or proof and acknowledgment, a Notary Pub-

lic in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances for land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate of proof or acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 21 day of May 1930

Daniel E Finn

[Seal]

Clerk.

[Endorsed]: Filed Jan 3-1930 R. S. Zimmerman,  
Clerk By Edmund L. Smith Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

ANSWER OF

COLUMBIA PICTURES CORPORATION

Comes now Columbia Pictures Corporation, a corporation, and for its answer to the complaint herein, states as follows:

I

Answering Paragraph I of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, is without knowledge as to the matters alleged therein and therefore denies that plaintiff, Cinema Patents Company,

Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of New York, or otherwise or at all; denies that Cinema Patents Company, Inc., is a citizen of the State of New York, or of any State, or that it has its principal office and place of business in the City of New York, County of New York, and State of New York, or elsewhere.

## II

Answering Paragraph II of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, admits the matters therein alleged.

## III

Answering Paragraph III of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, admits the matters alleged therein.

## IV

Answering Paragraph IV of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, is without knowledge as to the matters alleged therein and therefore denies that prior to the 17th day of February, 1909, or at any time, Leon Gaumont was the original, first or sole inventor of a certain new and useful method or apparatus for DEVELOPING, FIXING, TONING, AND OTHERWISE TREATING PHOTOGRAPHIC FILMS AND PRINTS, fully or otherwise described in Letters Patent No. 1,177,697; denies that such alleged invention had not been known or used by others in this country before his alleged invention thereof, or had not been patented or described in any printed publication in this or any other foreign country before his alleged invention thereof, or for more than two years prior to his alleged application for United States Letters Patent there-

for; denies that said alleged invention was not in public use or on sale in this country for more than two years prior to his said alleged application for said United States Letters Patent, or was not abandoned; denies that said alleged invention was not first patented or caused to be patented by the said inventor or his legal representatives or assigns in any foreign country upon an application filed more than twelve months prior to the filing of the said application for patent in this country.

## V

Answering Paragraph V of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, is without knowledge as to the matters alleged therein, therefore, denies that on the 17th day of February, 1909, or at any time, the said Leon Gaumont, as the inventor of said alleged invention, or otherwise or at all, applied for Letters Patent of the United States thereon; denies that the said Leon Gaumont complied with all or any of the laws, rules or regulations of the United States concerning such alleged application for patent; denies that such or any proceedings were had and that on the 4th day of April, 1916, or at any time, Letters Patent of or in the name of the United States of America, under seal of the Patent Office, signed by the Commissioner of Patents, in due form of law, and numbered 1,177,697, or otherwise or at all, were issued to said Leon Gaumont on said invention; denies that by such alleged issuance or any issuance of a patent to Leon Gaumont there was granted or secured to said Leon Gaumont, his successors or assigns, for seventeen years from the date of said alleged patent, or for any time or at all, the exclusive right, or any right, of making, using or vending to others to be used, the

alleged invention and improvements described in said alleged Letters Patent.

## VI

Answering Paragraph VII of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, denies that prior to September 15, 1915, or at any time or at all, Frederick B. Thompson, a citizen of the United States, was the original, first or sole inventor of a certain new and useful PHOTOGRAPHIC FILM TREATING APPARATUS, fully or otherwise described in Letters Patent No. 1,281,711; denies that said alleged invention had not been known or used by others in this country before his alleged invention thereof and had not been patented or described in any printed publication in this or any other foreign country before his alleged invention, or more than two years prior to his alleged application for United States Letters Patent therefor; denies that the said invention was not in public use or on sale in this country for more than two years prior to the said application for United States Letters Patent; denies that said alleged invention was not first patented or caused to be patented by said alleged inventor or his legal representatives or assigns in any foreign country for an application filed more than twelve months prior to the filing of his said application for patent.

## VII

Answering Paragraph VIII of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, denies that on the 15th day of September, 1915, or at any time or at all, the said Frederick B. Thompson, as the inventor of said invention, or otherwise or at all, applied for Letters Patent of the United States thereon; denies that

said Frederick B. Thompson complied with all or any of the laws, rules or regulations of the United States concerning such application; denies that such proceedings were had; that on the 15th day of October, 1918, or at any other time, Letters Patent of the United States, and in the name of the United States, were issued to said Frederick B. Thompson in due form of law or otherwise or at all, for said invention; denies that by any such alleged issuance of a patent there was granted or secured to said Frederick B. Thompson, his successors or assigns, for seventeen years from the date of said alleged patent, or for any time, the exclusive or any right of making, using or vending to others to be used, the alleged invention and improvements described in said Letters Patent.

#### VIII

Answering Paragraph IX of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, admits the matters therein alleged.

#### IX

Answering Paragraph X of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, denies that the alleged inventions patented in and by said Letters Patents No. 1,177,697 and No. 1,281,711, are capable of conjoint use; denies that said alleged inventions have been so used by this defendant; denies that said alleged inventions, or either of them, have been used by this defendant in infringement of said Letters Patent No. 1,177,697 and No. 1,281,711; this defendant denies that it has infringed said Letters Patents, or either of them, in any manner whatsoever.



## X

Answering Paragraph XI of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, denies that said alleged inventions alleged to be patented by said Letters Patent No. 1,177,697 and No. 1,281,711, or either of them, have been or are of great or any value or commercial utility; denies that the public in the United States of America or throughout the world has generally or at all recognized or acquiesced in the utility, value or patentability of said alleged inventions, or either of them, or has recognized or acquiesced in the validity of said Letters Patents, or either of them, or the exclusive or any rights of the plaintiff thereunder.

## XI

Answering Paragraph XII of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, denies that this defendant, severally, or jointly and severally, or jointly with Wm. Horsley Film Laboratories, Inc., a corporation, has directly or contributorily, or otherwise or at all, infringed the said alleged Letters Patents, or either of them, within the Central Division of the Southern District of California, or elsewhere or at all, since the issuance of said Letters Patents and prior to the commencement of this suit, or at any time, by manufacturing or using, or causing to be manufactured or used, either with or without the license or consent of plaintiff, apparatus containing the alleged inventions of said Letters Patents or the claims thereof, or has caused to be employed, or is or has been employing or causing to be employed, either with or without the license or consent of plaintiff, the method of process embodying one of the said alleged inventions of said Letters Patent No.

1,177,697, either as set forth in claim 1 thereof, or otherwise or at all. This defendant denies that it has committed any act or acts in infringement of said Letters Patents or either of them.

## XII

Answering Paragraph XIII of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, denies that this defendant severally or jointly with the defendant, Wm. Horsley Film Laboratories, Inc., or otherwise or at all, has wilfully or intentionally or in any manner whatsoever, infringed upon said Letters Patents, or either of them, or has committed any infringing acts whatsoever, or has wilfully or intentionally continued, or still continues or threatens further to continue to infringe upon the said Letters Patents or either of them.

## XIII

Answering Paragraph XIV of the Bill of Complaint herein, defendant, Columbia Pictures Corporation, denies that by reason of any act or acts of itself, or by any joint act or acts with defendant, Wm. Horsley Film Laboratories, Inc., or otherwise or at all, defendant has profited or that plaintiff has been irreparably, or in any manner whatsoever, damaged by any act or acts of defendant.

## XIV

Further answering said Bill of Complaint herein, defendant, Columbia Pictures Corporation, alleges that the alleged Letters Patents No. 1,177,697 and No. 1,281,711 were and are invalid for want of patentable invention.

## XV

Further answering said Bill of Complaint herein, defendant, Columbia Pictures Corporation, alleges that in view of the prior art as and before the alleged inventions

of said Gaumont and Thompson, define the claims of said Letters Patents No. 1,177,697 and No. 1,281,711, said claims cannot be so interpreted as to bring within the perview thereof as infringements thereof, any machines, devices, methods or processes used by this defendant.

XVI

Further answering said Bill of Complaint herein, defendant, Columbia Pictures Corporation, alleges that during the pendency in the United States Patent Office of the alleged applications upon which the said Letters Patents in suit issued, the patentees so limited the claims of said patents in order to obtain favorable consideration of the same, that the patentees or those claiming title to said alleged Letters Patents cannot now ask for or obtain an interpretation of said claims which will bring the methods or devices of this defendant within the scope thereof.

XVII

Further answering said Bill of Complaint herein, defendant, Columbia Pictures Corporation, alleges that the alleged inventions of the patents in suit, in view of the state of the art as they existed at the dates of the alleged inventions, did not involve invention or contain any patentable novelty, but consisted in mere adaptation of well known methods and devices for the required uses involving merely mechanical skill.

AND AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

I

This defendant is informed and believes and upon such information and belief, alleges that on or about the 26th day of June, 1925, a contract was made and entered into,

in writing, by and between Chester Bennett Film Laboratories, a corporation organized under the laws of the State of California, as party of the first part, Frederick B. Thompson, as party of the second part, Grace Seine Thompson, party of the third part, and the defendant, Wm. Horsley Film Laboratories, Inc., a corporation, as party of the fourth part, wherein and whereby it was agreed by and between the aforesaid parties that the parties of the first, second and third part would thereby grant to the party of the fourth part (the defendant, William Horsley Film Laboratories, Inc.) liberty and license to use two machines for treating, processing and developing photographic films for the full term of any and all of the patents, listed and referred to in said agreement as having been granted to the said Frederick B. Thompson, and among which were Letters Patent No. 1,328,464, and Letters Patent No. 1,260,595, and Letters Patent No. 1,299,266, and Letters Patent No. 1,281,711, and all other patents that might be granted to the said Frederick B. Thompson on certain patent applications listed and referred to in said agreement, or for any improvements thereon;

That it was further agreed in and by said contract in writing that the party of the first part, Chester Bennett Film Laboratories, a corporation, would construct and install within the laboratories of this defendant said two machines for treating, processing and developing photographic films and that for the use of said machines for said purposes, said Wm. Horsley Film Laboratories would pay royalty upon each foot of photographic film actually treated, developed or run through by the means of the said two machines and apparatus.

That a true copy of the aforesaid contract in writing is annexed and attached to this answer and marked Exhibit "A", and the same is by this reference incorporated herein as a part of this answer, the same as though said contract were herein fully set forth.

## II

This defendant is informed and believes and upon such information and belief alleges, that pursuant to the terms of the aforesaid contract, said two machines were constructed and installed in the laboratory of this defendant in Los Angeles, California and ever since the construction and installation of said two machines the same have been continuously used by this defendant for the purpose of developing and treating photographic film and the same are now being used by this defendant for that purpose.

## III

This defendant is informed and believes and upon such information and belief alleges, that the aforesaid agreement and the license therein contained have never been cancelled, terminated, forfeited or annulled and the same is now in full force and effect.

## IV

This defendant is informed and believes and upon such information and belief alleges, that the two machines referred to in said agreement and which were constructed and installed by Chester Bennett Film Laboratories, a corporation, in the laboratories of this defendant, Wm. Horsley Film Laboratories, Inc., were and are the only machines which have ever been used or which are now being used by this defendant for the developing, treating or processing of photographic film.

## V

This defendant is informed and believes and upon such information and belief alleges, that prior to the filing of the above entitled action and prior to the service of any notice of infringement by plaintiff in the above entitled action, the plaintiff became and ever since has been, and is now, the owner of the aforesaid contract in writing, together with the said two machines therein mentioned and described, together with all rights in and to the royalties provided for in said agreement, all of which matters are specifically alleged in the complaint filed by plaintiff in the Superior Court of the County of Los Angeles, State of California, which is more particularly described in the next succeeding paragraph of this answer.

## VI

That on or about May 3rd, 1930, an action was filed in the Superior Court of the County of Los Angeles, State of California, entitled "Cinema Patents Company, Inc., a corporation, Plaintiff, vs. William Horsley Laboratories, Inc., a corporation, Defendant", being No. 302045; that the Cinema Patents Company, Inc., a corporation, plaintiff in the aforesaid action is the identical Cinema Patents Company, Inc., a corporation, complainant in this action, and that William Horsley Laboratories, Inc., a corporation, defendant in the said Superior Court action is the same corporation which is named as one of the defendants in this action.

That the last pleading filed in the aforesaid action on behalf of plaintiff therein was its first amended complaint; that a true copy of the said first amended complaint is attached hereto, marked Exhibit "B" and by this reference the same is incorporated herein and made a part

hereof the same as though said first amended complaint were here in full set forth.

VII

That the aforesaid action is at issue in the said Superior Court of Los Angeles County, State of California, and is now pending and has not been dismissed.

WHEREFORE, this answering defendant prays that complainant take nothing by its bill and that this answering defendant have judgment for its costs and disbursements expended herein and for such other and further relief as may be just and equitable.

COLUMBIA PICTURES CORPORATION

By Samuel J Briskin

Defendant

Loyd Wright

Charles E. Millikan

Frank L. A. Graham

Solicitors and of Counsel

EXHIBIT A

[Stamped]: R 83 J U. S. Dist. Court. So Dist of  
Cal. Div Def Exhibit A Filed Dec 26/30 Head  
Special Master

LICENSE AGREEMENT

THIS AGREEMENT, made and entered into this 26th day of June, 1925, by and between CHESTER BENNETT FILM LABORATORIES, a corporation organized under the laws of the State of California, and having its principal place of business at Los Angeles, California, hereinafter referred to as the party of the first part, and FREDRICK B. THOMPSON, of Los Angeles, Cali-

ifornia, hereinafter referred as the party of the second part, and GRACE SEINE THOMPSON, of Los Angeles, California, hereinafter referred to as the party of the third part, and Wm. HORSLEY FILM LABORATORIES, INC., a corporation organized under the laws of the State of California and having its principal place of business at Los Angeles, California, hereinafter referred to as the party of the fourth part.

WITNESSETH: that

WHEREAS, Fredrick B. Thompson, did invent certain photographic film treating apparatus described in United States Letters Patent No. 1,281,711, issued October 15, 1918, to the said Fredrick B. Thompson; and

WHEREAS, said Fredrick B. Thompson did invent certain film treating apparatus described in United States Letters Patent No. 1,328,464, issued January 20, 1920 to the said Fredrick B. Thompson; and

WHEREAS, the said Fredrick B. Thompson did invent certain film treating apparatus described in United States Letters Patent No. 1,260,595, issued March 26, 1918, to the said Fredrick B. Thompson; and

WHEREAS, the said Fredrick B. Thompson did invent certain film wiping apparatus described in United States Letters Patent, No. 1,299,266, issued April 1, 1919, to the said Fredrick B. Thompson; and

WHEREAS, Fredrick B. Thompson did invent certain photographic film driers for which he filed application papers in the United States Patent Office on February 9, 1924, Serial Number 691,633; and

WHEREAS, said Fredrick B. Thompson did invent certain film treating apparatus, for which he filed applica-



tion papers in the United States Patent Office on February 9, 1924, Serial Number 691,634; and

WHEREAS, said Fredrick B. Thompson did, on the 27th day of August, 1923, enter into a license agreement with the party of the first part in respect to Letters Patent No. 1,328,464; No. 1,299,266; No. 1,281,711; No. 1,260,595, together with all improvements that he might make thereon; and

WHEREAS, the party of the third part warrants that she is the exclusive owner of United States Letters Patent No. 1,281,711; 1,299,266; 1,260,595; and 1,328,464, except for the interest conveyed to the party of the first part by that certain agreement of August 27, 1923, heretofore referred to; and

WHEREAS, the party of the fourth part is desirous of acquiring a license to operate two machines for treating, processing and developing photographic films, which machines and apparatus connected therewith are the invention of the said Fredrick B. Thompson, and the subject of the aforesaid patents and patent applications; and

WHEREAS, the party of the fourth part is desirous of having the parties of the first, second and third part construct and install the two machines for treating, processing and developing photographic films at the place of business of the party of the fourth part in the film laboratory of the party of the fourth part at 6060 Sunset Boulevard, Los Angeles, California,

NOW, THEREFORE, the said parties, in consideration of the hereinafter contained covenants and agreements, have and do hereby agree together as follows:

1. The parties of the first, second and third part do hereby grant to the party of the fourth part the right,

liberty and license to use two machines for treating, processing and developing photographic films for the full term of any and all of the aforesaid patents granted to the party of the second part and all other patents that may be granted to the party of the second part on the aforesaid patent applications or for any improvements thereon, for the consideration, period of time and under the conditions hereinafter expressed.

2. The party of the first part, under the direction of and with the assistance of the said party of the second part, agrees to construct and install within the laboratory of the party of the fourth part, two machines for treating, processing and developing photographic films, together with the appurtenances thereof and equipment and apparatus, in connection therewith, and the parties of the first, second and third part agree to lease to the party of the fourth part the said two machines for developing, processing and treating photographic films and the apparatus and equipment appurtenant thereto for the rental and on the terms and conditions hereinafter contained.

3. The party of the fourth part agrees to first prepare and put into condition for installation of the said machines and equipment a room in its laboratory at 6060 Sunset Boulevard, without cost to the parties of the first, second and third part, the preparation and putting into condition of said room to include the necessary excavations required therein and all other work incident to preparing the said room for the construction and installation of the said machines, apparatus and equipment; and the party of the fourth part agrees to install all necessary electric wiring and water piping that may be necessary in connection with the heaters and waters, in the operation of the said ma-

chines, the water piping to be run to the said heaters and the electric wiring and connections to be installed and placed as instructed by the party of the second part and as may be necessary to connect with the machines and apparatus for use in the installation thereof.

4. It is agreed by the parties hereto that the said machines and equipment, appurtenant thereto, shall be constructed and installed within ninety (90) days after the date of the execution of this agreement, PROVIDED, that the said room shall be prepared and ready for the installation thereof, at the time when the parties of the first and second part shall be prepared to place or install said machines and equipment and appurtenances thereof therein and allowing the necessary time thereafter for completing the said machines and the installation thereof with the necessary equipment and appurtenances.

5. The parties hereto agree that upon the installation and completion of the machines, apparatus and equipment, and for the period of the life of any or all of said patents or any patents that may be granted upon the applications above set forth, and for the further and additional time that the party of the fourth part may elect to use, maintain and operate said machines and equipment, the party of the fourth part shall have the right to use, operate and maintain the said machines, apparatus and equipment in the said laboratory of the party of the fourth part and for the purposes of the business conducted by the party of the fourth part at its said laboratory in treating, processing and developing photographic films, and the parties of the first, second and third part agree to lease, and do hereby lease to the said party of the fourth part, the said machines and apparatus connected therewith for the pur-

poses and for the terms above stated, and for the consideration hereinafter set forth.

6. The party of the fourth part, in consideration of the license above granted, and the installing of the said two machines by the parties of the first, second and third parts, agrees to pay as rental, compensation and royalty on the said machines, apparatus and equipment, and appurtenances thereto, including the installation and construction thereof, the sum of one mill per foot for and on account of all film actually treated, developed or run through by means of the said two machines and apparatus. The said rental is to be paid at the times and in the manner hereinafter provided.

7. The party of the fourth part, agrees to pay in advance, on account of said rental, the total cost of construction and installation of said two machines, and apparatus and appurtenances thereto, and ten per cent (10%) thereof in addition thereto, the said advance payment to be made as follows:

The party of the first part shall render a statement of the actual cost of the materials and labor used or necessary in the said construction and installation of the said two machines, at intervals of every two (2) weeks from and after the commencement of the work of said construction and installation, until the completion thereof, and the fourth party shall pay the amounts shown thereby, together with the additional payments as hereinafter stated.

8. The party of the fourth part agrees to pay to the party of the first part the cost incurred for and in connection with the said construction and installation of said machines, to the amount shown and evidenced by the state-

ments rendered and at the time of rendition of statement thereof, and ten (10) percent thereof in addition thereto: It being stipulated and provided however, that the total cost of said machines and apparatus, when installed and ready for operation, shall not be over the sum of Seven Thousand Five Hundred Dollars (\$7500) each, including all equipment, the said ten (10) percent to be in addition to said total amount; the said amount to be based upon the cost of the said machines and the appurtenances thereto, exclusive of the cost to the party of the fourth part of the cost to him of the preparation and putting into condition of the said room for the installation of the said machines and the said ten per cent (10%) in addition thereto. IT BEING UNDERSTOOD, that the total cost, figured on this basis, to the party of the fourth part, of the installation of the two machines, in condition for operation, shall not be over Sixteen Thousand, five hundred (16,500) dollars exclusive of the cost of preparing and conditioning the said room.

9. IT IS MUTUALLY AGREED by the parties hereto that the amount to be so paid on account of the cost of construction installation and equipment and apparatus and appurtenances to the said two machines shall be applied or credited to the party of the fourth part as advance rental for the two machines, computed at the rate of one mill per foot, and no further payment or rental shall be due or payable until the film has been treated and run by means of the said machines and apparatus to the amount of the said total advanced payment.

10. IT IS FURTHER MUTUALLY AGREED by the parties hereto that after the total amount of credit for and on account of the said advanced payment shall

have been used and covered by the film treated and run as last above stated, that a discount or rebate shall thereafter be allowed to the party of the fourth part whereby the net rental to be paid for and on account of the photographic film treated, processed or developed by the said machines, apparatus and equipment appurtenant thereto, shall be one-fourth of one mill per foot instead of the rate or amount as above provided.

11. IT IS FURTHER MUTUALLY AGREED by the parties hereto that the said reduction or credit to be allowed is on the condition that no transfer or assignment of this lease, agreement and license, or any rights thereunder, shall be made by the party of the fourth part and that the said rebate or discount shall be allowed to the party of the fourth part on account of the film treated by the party of the fourth part in its said laboratory and that in case of any transfer or assignment by the said party of the fourth part of any rights under this agreement and license, the said rebate, allowance, and discount shall be withdrawn and terminated.

12. The party of the fourth part agrees to keep true and accurate books of account showing the number of feet of film treated, processed or developed by the said two machines which books of account shall be open during all usual business hours for the inspection of the parties of the first, second and third part, or their authorized agents, and the party of the fourth part agrees to render each month a statement to the parties of the first, second and third part, on the 10th day of each month during the term of this license setting forth a true statement of the number of feet of film treated, developed or processed by the said two machines during the preced-

ing month, and agrees to pay to the parties of the first, second and third part, by check, at the office of the party of the first part, at 6363 Santa Monica boulevard, Los Angeles, California, within ten (10) days thereafter, the rental due upon all such feet of film treated, processed or developed hereunder during the preceding month, time being of the essence of both the rendering of such statement and the payment of rentals.

13. IT IS FURTHER MUTUALLY COVENANTED AND AGREED that all costs and expenses incident to the operation and maintenance of the said two machines, apparatus and equipment therefor or appurtenant thereof, after the installation and completion thereof, including all reports thereon, shall be paid by the party of the fourth part at the cost to the party of the fourth part, and that no part of the cost of operation or expenses incident to the operation and maintenance of the said two machines shall be charged to the parties of the first, second, or third part, or paid by any of the said parties of the first, second or third part.

14. IT IS FURTHER MUTUALLY COVENANTED AND AGREED, as part of the consideration hereof, that the said two machines, apparatus and equipment appurtenant thereto, to be constructed and installed by the parties of the first, second and third part shall be and remain the property of the said parties of the first, second and third part, and that the said fourth party shall have no title or interest therein other than the right to the use thereof pursuant to the terms of this lease and license agreement, and that upon the expiration of the term hereof, or the termination of this lease and license agreement, the first, second and third parties shall

have the right to remove the said two machines, apparatus and equipment appurtenant thereto or connected therewith, and may enter into and upon the premises of the party of the fourth part wherein the same shall be installed and located for the purposes of removing the same, but that upon said removal from the said premises, the premises of the party of the fourth part shall be left in good order and condition.

It is provided and agreed, however, that upon the expiration of the said patents herein listed and described, if the said machines and equipment are at said time installed and being used pursuant to this agreement and if this agreement has not at said time been terminated, the fourth party shall have the option and right to purchase the said machines, apparatus and equipment, the amount to be paid therefor to be based upon the cost of said machines and apparatus and the equipment thereof, less a fair and proper amount for depreciation; and if the amount to be so paid cannot be mutually agreed upon at said time, three (3) referees shall be appointed, one to be named by the party of the first part and one by the party of the fourth part, the two so named to select the third, and said referees shall fix and determine the amount to be paid, their findings and determination to be final and binding upon the parties thereto.

IN WITNESS WHEREOF the parties of the first and fourth part have affixed their names and caused their corporate seals to be affixed hereto by their duly authorized officers, and the parties of the second and third



part have hereunto set their hands and seals the day and year first above set forth.

CHESTER BENNETT FILM  
LABORATORIES, a corporation  
By A. J. Guerin

corporate seal

Vice President.

FRED B. THOMPSON  
SECOND PARTY  
GRACE SEINE THOMPSON  
THIRD PARTY

ATTEST:

H. T. James  
Secretary

WM HORSLEY FILM  
LABORATORIES, INC.,  
a corporation  
By William Horsley

corporate seal

President

ATTEST:

H. E. Dodge  
Secretary

STATE OF CALIFORNIA        )  
                                          ) ss  
COUNTY OF LOS ANGELES    )

On this 26th day of June, A. D., 1925 before me, C. E. ELFSTROM, a Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appeared A. J. GUERIN known to me to be the Vice President and H. T. JAMES known to me to be the Secretary of the CHESTER BENNETT FILM LABORATORIES, the Corporation that executed the

within Instrument, known to me to be the persons who executed the within Instrument, on behalf of the Corporation therein named, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

C. E. ELFSTROM

Notary Public in and for said County and State.  
(My Commission Expires Dec. 5, 1928)

EXHIBIT B

IN THE SUPERIOR COURT OF THE STATE OF  
CALIFORNIA, IN AND FOR THE  
COUNTY OF LOS ANGELES.

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CINEMA PATENTS COMPANY, )	(	
INC., a Corporation, )	(	
	)	No. 302045
PLAINTIFF, )	(	
	)	FIRST
-vs-	(	AMENDED
	)	COMPLAINT.
WILLIAM HORSLEY LABORA- )	(	
TORIES, INC., a Corporation, )	(	
	)	
DEFENDANT. )	(	

---

Comes now the Plaintiff, Cinema Patents Company, Inc., a Corporation, and for cause of action against the above named defendant, complains and alleges as follows, to-wit:

## I

That on or about the 26th day of June, 1925, the Chester Bennett Film Laboratories, a Corporation, organized and existing under and by virtue of the laws of the State of California, with its principal place of business at Los Angeles, California, Frederick B. Thompson, of Los Angeles, California, Grace Seine Thompson, of Los Angeles, California, and William Horsley Film Laboratories, Inc., a Corporation, organized and existing under and by virtue of the laws of the State of California, with its principal place of business at Los Angeles, California, entered into a license agreement in writing, wherein, among other things, it was, in substance, provided that the Chester Bennett Film Laboratories, a Corporation, Frederick B. Thompson and Grace Seine Thompson agreed to lease to the William Horsley Film Laboratories, Inc., a Corporation, two machines for treating, processing and developing photographic films, together with the appurtenances thereof and equipment and apparatus in connection therewith. And the said Chester Bennett Film Laboratories, a Corporation, did further agree to construct and install said two machines in the laboratory of the said William Horsley Film Laboratories, Inc., a corporation. It was further provided in said license agreement that the William Horsley Film Laboratories, Inc., a Corporation, should have the right to use, operate and maintain the said machines, apparatus and equipment in the said Laboratory of the said William Horsley Film Laboratories, Inc., a Corporation, for the purpose of treating, processing and developing photographic films; that in consideration of the rights therein granted to the said William Horsley Film Laboratories,

Inc., a Corporation, by Chester Bennett Film Laboratories, a Corporation, Frederick B. Thompson and Grace Seine Thompson, the said William Horsley Film Laboratories, Inc., a Corporation, did agree, among other things, to pay as rental, compensation and royalty on the said machines, apparatus and equipment and appurtenances thereto, the sum of one mill per foot for and on account of films actually treated, developed or run through by means of the said two machines and apparatus, until the said William Horsley Laboratories, Inc., a Corporation, paid to the other named parties a total sum equal to the cost of the said two machines and ten (10%) per cent in addition thereto,—after which the said William Horsley Film Laboratories, Inc., a Corporation, agreed to pay to the other named parties as rental or royalty, the sum of one-fourth of one mill per foot for and on account of all films actually treated, developed or run through by means of the said two machines and apparatus,—except in the event of the assignment of the said agreement by the said William Horsley Film Laboratories, Inc., a Corporation, to another party, in which event the original rate, to-wit, one mill per foot for film treated, developed or run through by means of the said two machines and apparatus, was to be resumed and continue in effect; that it was further agreed and provided in said license agreement that the said defendant, William Horsley Film Laboratories, Inc., a Corporation, would, on the 10th day of each month during the term of the license agreement, render a true statement of the number of feet of film treated, developed or processed by the said two machines during the preceding month, and said William Horsley Film Laboratories, Inc., a Corporation,

agreed to pay by check within ten days thereafter rental due upon all such footage of film treated, processed or developed during the preceding month,—time being the essence of both the rendering of such statement and the payment of rentals.

That after the execution of the said agreement, as aforesaid, the Chester Bennett Film Laboratories, a Corporation, Frederick B. Thompson and Grace Seine Thompson in good faith entered into and performed all of the conditions which said license agreement required on their part to be performed; that ever since the construction, and installation of said two machines the said William Horsley Film Laboratories, Inc., a Corporation, have been in the possession and full enjoyment and use of said machines, apparatus and equipment.

## II

That on or about the 22nd day of January, 1927, by an instrument in writing, the Chester Bennett Film Laboratories, a Corporation, assigned, conveyed and transferred to Spoor-Thompson Machine Company, an Illinois Corporation, the title to and ownership of said license agreement, and the royalties accruing and payable thereon, and all the right, title and interest which the said Chester Bennett Film Laboratories, a Corporation, had in and to the said license agreement entered into on the 26th day of June, 1925, by and between Chester Bennett Film Laboratories, a Corporation, Frederick B. Thompson, Grace Seine Thompson and William Horsley Film Laboratories, Inc., a Corporation, and the title and ownership in and to the said two film developing machines, the subject of the said license agreement: that subsequent to the 22nd day of June, 1927, and on or about the 17th

day of February, 1928, by an instrument in writing the said Frederick B. Thompson and Grace Seine Thompson did consent to and approve the said assignment of January 22, 1927, to the Spoor-Thompson Machine Company, a Corporation.

### III.

That on or about the 16th day of April, 1930, the Spoor-Thompson Machine Company, by an instrument in writing, assigned all their right, title and interest in and to said license agreement of June 26, 1925, to CINEMA PATENTS COMPANY, INC., a Corporation, organized and existing under and by virtue of the laws of the State of New York, plaintiff herein, together with the title and ownership in and to the said two film developing machines, and the said CINEMA PATENTS COMPANY, INC., a Corporation, plaintiff herein, has ever since been and now is the owner and holder of the said license agreement and all of the rights thereunder.

### IV

That since the month of October, 1925, defendant William Horsley Film Laboratories, Inc., a Corporation, has violated the terms and conditions of said license agreement in that said defendant has filed statements, in accordance with said license agreement, which said statements were false and untrue in that they did not state the true number of feet of photographic film treated, developed or processed by said two machines during each of the preceding months.

### V

That since the month of October, 1925, the defendant William Horsley Film Laboratories, Inc., a Corporation, has violated the terms and conditions of said license agree-

ment in that said defendant has failed to pay to said plaintiff as rental, compensation and royalty the sum provided in said license agreement for the number of feet of photographic film actually treated, developed or processed by said two machines.

## VI

That said defendant has further violated the terms and conditions of said license agreement in that said defendant has, without the consent or approval of plaintiff or any of its predecessors in interest, redesigned, reconstructed, modified and rebuilt one or both of the said two photographic film developing machines which were and continue to be the sole property of the plaintiff herein; that said redesigning, reconstructing, modifying and rebuilding of the said machines, or one of them, was not necessary to continue the use and operation, or to maintain, the said machines or machine, and that so redesigning, reconstructing and modifying and rebuilding the said machines or machine has and does constitute such material alterations and changes in the machines or machine that the fundamental object, nature and purposes of the said machines or machine has been changed in the following respect, to-wit: That the said machines, as originally installed and operated, were intended and adapted for the development of photographic positive film only, and the alterations and changes made by the said defendant have converted and do convert the said machines or machine into apparatus intended and adapted for the development of photographic negative film; that the aforesaid alterations and changes are in part as follows: The building in of an additional developing tank, together with two complete systems or series of film supporting

and driving rollers, with shafts and gear-housings to drive the driving rollers; also the reconstructing of the main frame to support some of the additional parts enumerated; that said defendant has further violated the terms and conditions of the said license agreement in that it has, without the consent or approval of the plaintiff or any of its predecessors in interest, further modified, altered and changed the one or both of the said two machines by machining grooves in some or all of the supporting and driving rollers for the purpose of adapting the said machines or machine to the development, processing and treating of 16 M/M photographic motion picture film, commonly known as amateur film,—all of which is without the spirit and intent of the aforesaid license agreement. That defendant has, since so redesigning, reconstructing and altering said machines or machine, operated, is now operating, and threatens to and will continue operating, unless restrained, the said machines or machine for the purpose of developing, treating and processing negative photographic film, and has and now does and threatens to continue to and will actually develop in said machines or machine negative photographic film unless restrained by this court. That the plaintiff and/or its predecessors in interest had no notice of the aforesaid violations on the part of the defendant of its agreement, and had no notice of its acts and conduct in derivation and defiance of the rights of the plaintiff, and its predecessors in interest until on or about October, 1929, and since that date, and until the time of the filing of this action, plaintiff has been investigating and verifying its information regarding the said acts and conduct of the defendant, and did not secure and have such full



verification and knowledge until on or about the time of the filing of this action.

## VII

That plaintiff is engaged in the business of licensing and leasing several different types of machines for the development of motion picture films; that certain of said machines leased to certain laboratories are adapted for the specific purpose of developing, processing and treating negative films of standard size, to-wit, 35 M/M; that certain other of said machines licensed or leased by plaintiff to laboratories other than defendant, are specifically adapted for the processing, developing and treating of grandeur film, to-wit 70 M/M film; that certain other machines licensed or leased by plaintiff to other film developing laboratories than defendant, are specifically adapted for the purpose of development of amateur films, to-wit, 16 M/M films; that certain other types of machines licensed or leased by plaintiff are specifically adapted for the development of positive films; that machines adapted solely for the development, processing and treating of positive films cannot be used for the developing, processing or treating of negative photographic films.

That the terms and conditions upon which plaintiff licenses or leases film developing machines to laboratories other than defendant include implied warranties to the respective licensees or lessees of an exclusive use of the respective machines for the developing, processing and treating of that size and type of photographic motion picture film for which said machines are adapted; that plaintiff is informed and believes and therefore alleges defendant has developed, processed and treated negative motion picture film for customers of plaintiff's licensees

or lessees and has thus deprived plaintiff's licensees or lessees of business and revenue therefrom to which said licensees or lessees were justly entitled; that the violation of one licensee or lessee, to-wit, defendant herein, of the exclusive right or rights enjoyed by one or another of plaintiff's licensees and lessees, other than defendant, by the perverted use of the machine or machines in developing, treating and processing negative photographic films, has and is laying the plaintiff open to actions for breach of implied warranty, and has and is causing and will continue to cause,—unless the perverted operation is restrained and enjoined,—unrest among plaintiff's licensees or lessees, other than defendant, and that some or all of said licensees or lessees, other than defendant, have threatened and continue to threaten to and will refuse to continue using and paying royalties for the use of film developing machines, as aforesaid.

### VIII

That said plaintiff is engaged in the business of leasing and licensing to laboratories machines adapted for the purpose of developing, processing or treating photographic films, and that by reason of the operation of the said machine and/or machines as now carried on by defendant, in that said defendant is so operating said machines that they are developing, treating and processing negative photographic films instead of positive photographic films, (for which said machines were constructed and installed under said license agreement), and if defendant is not restrained and enjoined from operating said machines, as aforesaid, it will cause plaintiff to suffer great and irreparable injury, which said injury is more in particular as follows: That said plaintiff,

and its predecessors in interest, at all times herein mentioned has been and plaintiff is now engaged in the business of leasing and licensing to laboratories certain patented machines adapted for the purpose of developing, processing and treating photographic films; that the plaintiff and said predecessors in interest at said times were exclusively the owner of the patent rights in said machines, and possessed certain patent rights on machines which developed photographic negative films, and different machines for the development of photographic positive films; that at the time the contract with defendant was entered into, as aforesaid, it was understood and agreed by the parties thereto that said licensing agreement would and should permit the use of the machines referred to therein by said defendant for the development of photographic positive films only; that during said times plaintiff and its predecessors in interest have entered into licensing or leasing contracts with many other persons of machines adapted for the purpose of developing photographic negative films, and has impliedly warranted to said parties that no other machine shall be used under license or lease from plaintiff for the developing of such negative films; that plaintiff and its predecessors in interest have expended large sums of money in the development of the processes of producing said photographic films and in securing patents on said machines, and have expended large sums of money in advertising the same, and it has become generally known among laboratories and similar businesses that the plaintiff has the exclusive right to manufacture and license said machines; that plaintiff has received many intimations and evidences of loss of business on account of

the fact that it is becoming generally known that the defendant herein is using the machines of plaintiff contrary to the terms of the licensing contract aforesaid, and plaintiff has suffered pecuniary loss thereby; that plaintiff is also threatened with lawsuits from such other parties to whom plaintiff has impliedly warranted that no other machines such as those of defendant shall be used or licensed for the purpose of developing negative photographic films; that the continuation of the use by the defendant of said machines for the purpose of developing, processing and treating photographic negative films injured and will continue to injure the business of plaintiff and its income and profits which it derives from the licensing and/or leasing of said machines; that by reason of the acts and conduct of the defendant as herein set forth plaintiff will be subjected to a multiplicity of suits and it will also have to bring several different actions against the defendant; that plaintiff asks for an injunction pendente lite, and for a permanent injunction against the further use of the machines of the defendant, and plaintiff has no adequate and available remedy at law against the threatened, unauthorized use of said machines by the defendant for the purpose of developing, processing and treating negative photographic films by an action for damages inasmuch as the injury is a continuous one and would involve endless litigation, and it is further more of such a nature, affecting plaintiff's business in various places, that its extent could not be measured or estimated, or proof of the full measure of damages be procured; that plaintiff has no plain, speedy or adequate remedy at law and has been and will be irreparable damaged;

That unless defendant is restrained from using said machines for the purpose of developing, processing or treating negative photographic films other licensees or lessees now operating machines for the purpose of developing, processing and treating positive photographic films under similar agreements as that under which defendant is operating, will also claim the right to, and they do threaten to and will use the said machine so licensed or leased in the same manner as the defendant is attempting to and is using his said machines as hereinbefore set forth.

## IX

That among other things in said license agreement it is provided that the said two machines, apparatus and equipment appurtenant thereto, shall be and remain the property of the said first, second and third parties, and that said fourth party shall have no title or interest therein other than the right to the use thereof pursuant to the terms of the lease and license agreement, and that upon the termination of the lease and license agreement the said parties of the first, second and third part shall have the right to remove said two machines, apparatus and equipment appurtenant thereto or connected therewith, and may enter into and upon the premises of the party of the fourth part wherein the same shall be installed and located, for the purpose of removing the same.

## X

That a controversy has arisen between the parties to this license agreement relating to the legal rights and duties of the respective parties operating under said license agreement.

## XI

That plaintiff has no plain, speedy or adequate remedy at law.

WHEREFORE: Plaintiff prays that the court give judgment against defendant as follows, to-wit:

1. That defendant be required to account to the plaintiff for all photographic film developed, processed or treated in and by the said two machines, and that the defendant be further required to pay to the plaintiff such sum or sums as are found to be the difference between those amounts actually heretofore paid by the defendant to the plaintiff or its predecessors in interest, and the amounts actually due plaintiff, or its predecessors in interest, under the said license agreement.

2. That the court declare the license agreement terminated and that the property now in the hands of the defendant be returned to the plaintiff herein.

3. That the court make a declaration of the rights and/or duties of the said parties to the said license agreement.

4. That an order be issued by this court directing this defendant to appear at a time and place to be fixed by this court, and show cause, if any it may have, why a preliminary injunction should not issue pending this action, restraining and enjoining said defendant from operating said two machines, or either of them, for the purpose of developing, processing or treating negative photographic film, and that contemporaneously with the issuance of the said order to show cause, such a temporary restraining order issue pending the hearing of the said order to show cause.

5. That defendant be permanently restrained and enjoined from using the said two machines, or either of them for the purpose of processing, developing or treating negative photographic film.

6. For such other and further relief as to the court may seem meet and just in the premises.

ARTHUR S. GUERIN  
HERBERT A. HUEBNER  
CLIFFORD THOMS

Attorneys for Plaintiff.

STATE OF CALIFORNIA                    )  
COUNTY OF LOS ANGELES        ) <sup>ss</sup>

ARTHUR S. GUERIN, being by me first duly sworn, deposes and says: That he is the attorney for the plaintiff in the above entitled action; that he has read the foregoing First Amended Complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true; that the reason why this verification is not made by the plaintiff is because the said plaintiff and all of its officers are absent from Los Angeles County, where affiant has his office.

Arthur S. Guerin

Subscribed and sworn to before me this 10th day of May, 1930.

[Seal]

Opal Lisenby

Notary Public in and for said County and State

[Endorsed]: Received copy of within Answer this 25 day of July, 1930. Herbert A Huebner By Robt. M. McManigal Attorney for Plaintiff Filed Jul 25 1930 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ANSWER OF WM. HORSLEY FILM  
LABORATORIES, INC.

Comes now Wm. Horsley Film Laboratories, Inc., and for its answer to the complaint herein, states as follows:

I

Answering Paragraph I of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., is without knowledge as to the matters alleged therein and therefore denies that plaintiff, Cinema Patents Company, Inc., is a corporation duly organized and existing under and by virtue of the laws of the State of New York, or otherwise or at all; denies that Cinema Patents Company, Inc., is a citizen of the State of New York, or of any State, or that it has its principal office and place of business in the City of New York, County of New York, and State of New York, or elsewhere.

II

Answering Paragraph II of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., admits the matters therein alleged.

III

Answering Paragraph III of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., admits the matters alleged therein.

IV

Answering Paragraph IV of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that prior to the 17th day of February, 1909, or at any time, Leon Gaumont was the original, first or sole inventor of a certain new and useful method or apparatus for DEVELOPING, FIXING, TONING, AND



OTHERWISE TREATING PHOTOGRAPHIC FILMS AND PRINTS, fully or otherwise described in Letters Patent No. 1,177,697; denies that such alleged invention had not been known or used by others in this country before his alleged invention thereof, or had not been patented or described in any printed publication in this or any other foreign country before his alleged invention thereof, or for more than two years prior to his alleged application for United States Letters Patent therefor; denies that said alleged invention was not in public use or on sale in this country for more than two years prior to his said alleged application for said United States Letters Patent, or was not abandoned; denies that said alleged invention was not first patented or caused to be patented by the said inventor or his legal representatives or assigns in any foreign country upon an application filed more than twelve months prior to the filing of the said application for patent in this country.

## V

Answering Paragraph V of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that on the 17th day of February, 1909, or at any time, the said Leon Gaumont, as the inventor of said alleged invention, or otherwise or at all, applied for Letters Patent of the United States thereon; denies that the said Leon Gaumont complied with all or any of the laws, rules or regulations of the United States concerning such alleged application for patent; denies that such or any proceedings were had and that on the 4th day of April, 1916, or at any time, Letters Patent of or in the name of the United States of America, under seal of the Patent Office, signed by the Commissioner of Patents,

in due form of law, and numbered 1,177,697, or otherwise or at all, were issued to said Leon Gaumont on said invention; denies that by such alleged issuance or any issuance of a patent to Leon Gaumont there was granted or secured to said Leon Gaumont, his successors or assigns, for seventeen years, from the date of said alleged patent, or for any time or at all, the exclusive right, or any right, of making, using or vending to others to be used, the alleged invention and improvements described in said alleged Letters Patent.

## VI

Answering Paragraph VII of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that prior to September 15, 1915, or at any time or at all, Frederick B. Thompson, a citizen of the United States, was the original, first or sole inventor of a certain new and useful PHOTOGRAPHIC FILM TREATING APPARATUS, fully or otherwise described in Letters Patent No. 1,281,711; denies that said alleged invention had not been known or used by others in this country before his alleged invention thereof and had not been patented or described in any printed publication in this or any other foreign country before his alleged invention, or more than two years prior to his alleged application for United States Letters Patent therefor; denies that the said invention was not in public use or on sale in this country for more than two years prior to the said application for United States Letters Patent; denies that said alleged invention was not first patented or caused to be patented by said alleged inventor or his legal representatives or assigns in any foreign country for an ap-

plication filed more than twelve months prior to the filing of his said application for patent.

VII

Answering Paragraph VIII of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that on the 15th day of September, 1915, or at any time or at all, the said Frederick B. Thompson, as the inventor of said invention, or otherwise or at all, applied for Letters Patent of the United States thereon; denies that said Frederick B. Thompson complied with all or any of the laws, rules or regulations of the United States concerning such application; denies that such proceedings were had; that on the 15th day of October, 1918, or at any other time, Letters Patent of the United States, and in the name of the United States, were issued to said Frederick B. Thompson in due form of law or otherwise or at all, for said invention; denies that by any such alleged issuance of a patent there was granted or secured to said Frederick B. Thompson, his successors or assigns, for seventeen years from the date of said alleged patent or for any time, the exclusive or any right of making, using or vending to others to be used, the alleged invention and improvements described in said Letters Patent.

VIII

Answering Paragraph IX of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., admits the matters therein alleged.

IX

Answering Paragraph X of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that the alleged inventions patented in and by said

Letters Patents No. 1,177,697 and No. 1,281,711, are capable of conjoint use; denies that said alleged inventions have been so used by this defendant; denies that said alleged inventions, or either of them, have been used by this defendant in infringement of said Letters Patent No. 1,177,697 and No. 1,281,711; this defendant denies that it has infringed said Letters Patents, or either of them, in any manner whatsoever.

## X

Answering Paragraph XI of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that said alleged inventions alleged to be patented by said Letters Patent No. 1,177,697 and No. 1,281,711, or either of them, have been or are of great or any value or commercial utility; denies that the public in the United States of America or throughout the world has generally or at all recognized or acquiesced in the utility, value or patentability of said alleged inventions, or either of them, or has recognized or acquiesced in the validity of said Letters Patents, or either of them, or the exclusive or any rights of the plaintiff thereunder.

## XI

Answering Paragraph XII of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that this defendant, severally, or jointly and severally, or jointly with Columbia Pictures Corporation, a corporation, has directly or contributorily, or otherwise or at all, infringed the said alleged Letters Patents, or either of them, within the Central Division of the Southern District of California, or elsewhere or at all, since the issuance of said Letters Patents and prior to the commencement of this suit, or at any time, by manufacturing

or using, or causing to be manufactured or used, either with or without the license or consent of plaintiff, apparatus containing the alleged inventions of said Letters Patents or the claims thereof, or has caused to be employed, or is or has been employing or causing to be employed, either with or without the license or consent of plaintiff, the method of process embodying one of the said alleged inventions of said Letters Patent No. 1,177,697, either as set forth in claim 1 thereof, or otherwise or at all. This defendant denies that it has committed any act or acts in infringement of said Letters Patents or either of them.

## XII

Answering Paragraph XIII of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that this defendant severally or jointly with the defendant, Columbia Pictures Corporation, or otherwise or at all, has wilfully or intentionally or in any manner whatsoever infringed upon said Letters Patents or either of them, or has committed any infringing acts whatsoever, or has wilfully or intentionally continued, or still continues or threatens further to continue to infringe upon the said Letters Patents or either of them.

## XIII

Answering Paragraph XIV of the Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., denies that by reason of any act or acts of itself, or by any joint act or acts with defendant, Columbia Pictures Corporation, or otherwise or at all, defendant has profited or that plaintiff has been irreparably, or in any manner whatsoever, damaged by any act or acts of defendant.

## XIV

Further answering said Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., alleges that the alleged Letters Patents No. 1,177,697 and No. 1,281,711 were and are invalid for want of patentable invention.

## XV

Further answering said Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., alleges that in view of the prior art as and before the alleged inventions of said Gaumont and Thompson, define the claims of said Letters Patents No. 1,177,697 and No. 1,281,711, said claims cannot be so interpreted as to bring within the purview thereof as infringements thereof, any machines, devices, methods or processes used by this defendant.

## XVI

Further answering said Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., alleges that during the pendency in the United States Patent Office of the alleged applications upon which the said Letters Patents in suit issued, the patentees so limited the claims of said patents in order to obtain favorable consideration of the same; that the patentees or those claiming title to said alleged Letters Patents cannot now ask for or obtain an interpretation of said claims which will bring the methods or devices of this defendant within the scope thereof.

## XVII

Further answering said Bill of Complaint herein, defendant, Wm. Horsley Film Laboratories, Inc., alleges that the alleged inventions of the patents in suit, in view

of the state of the art as they existed at the dates of the alleged inventions, did not involve invention or contain any patentable novelty, but consisted in mere adaptation of well known methods and devices for the required uses involving merely mechanical skill.

AND AS A FURTHER, SEPARATE AND AFFIRMATIVE DEFENSE, THIS DEFENDANT ALLEGES:

I

That on or about the 26th day of June, 1925, a contract was made and entered into, in writing, by and between Chester Bennett Film Laboratories, a corporation organized under the laws of the State of California, as party of the first part, Fredrick B. Thompson, as party of the second part, Grace Seine Thompson, party of the third part, and the defendant, William Horsley Film Laboratories, Inc., a corporation, as party of the fourth part, wherein and whereby it was agreed by and between the aforesaid parties that the parties of the first, second and third part would thereby grant to the party of the fourth part (the defendant, William Horsley Film Laboratories, Inc.) liberty and license to use two machines for treating, processing and developing photographic films for the full term of any and all of the patents, listed and referred to in said agreement as having been granted to the said Fredrick B. Thompson, and among which were Letters Patent No. 1,328,464, and Letters Patent No. 1,260,595, and Letters Patent No. 1,299,266, and Letters Patent No. 1,281,711, and all other patents that might be granted to the said Fredrick B. Thompson on certain patent applications listed and

referred to in said agreement, or for any improvements thereon;

That it was further agreed in and by said contract in writing that the party of the first part, Chester Bennett Film Laboratories, a corporation, would construct and install within the laboratories of this defendant said two machines for treating, processing and developing photographic films and that for the use of said machines for said purposes, said William Horsley Film Laboratories would pay royalty upon each foot of photographic film actually treated, developed or run through by the means of the said two machines and apparatus.

That a true copy of the aforesaid contract in writing is annexed and attached to this answer and marked Exhibit "A", and the same is by this reference incorporated herein as a part of this answer, the same as though said contract were herein fully set forth.

## II

That pursuant to the terms of the aforesaid contract, said two machines were constructed and installed in the laboratory of this defendant in Los Angeles, California, and ever since the construction and installation of said two machines the same have been continuously used by this defendant for the purpose of developing and treating photographic film and the same are now being used by this defendant for that purpose.

## III

That the aforesaid agreement and the license therein contained have never been cancelled, terminated, forfeited or annulled and the same is now in full force and effect.

## IV

That the two machines referred to in said agreement and which were constructed and installed by Chester



Bennett Film Laboratories, a corporation, in the laboratories of this defendant, William Horsley Film Laboratories, Inc., were and are the only machines which have ever been used or which are now being used by this defendant for the developing, treating or processing of photographic film.

#### V

This defendant is informed and believes and upon such information and belief, alleges that prior to the filing of the above entitled action and prior to the service of any notice of infringement by plaintiff in the above entitled action, the plaintiff became and ever since has been, and is now, the owner of the aforesaid contract in writing, together with the said two machines therein mentioned and described, together with all rights in and to the royalties provided for in said agreement, all of which matters are specifically alleged in the complaint filed by plaintiff in the Superior Court of the County of Los Angeles, State of California, which is more particularly described in the next succeeding paragraph of this answer.

#### VI

That on or about May 3rd, 1930, an action was filed in the Superior Court of the County of Los Angeles, State of California, entitled "Cinema Patents Company, Inc., a corporation, Plaintiff, vs. William Horsley Laboratories, Inc., a corporation, Defendant", being No. 302045; that the Cinema Patents Company, Inc., a corporation, plaintiff in the aforesaid action is the identical Cinema Patents Company, Inc., a corporation, complainant in this action, and that William Horsley Laboratories, Inc., a corporation, defendant in the said Superior Court

action is the same corporation which is named as one of the defendants in this action and is this answering defendant.

That the last pleading filed in the aforesaid action on behalf of plaintiff therein was its first amended complaint; that a true copy of the said first amended complaint is attached hereto, marked Exhibit "B" and by this reference the same is incorporated herein and made a part hereof the same as though said first amended complaint were herein fully set forth.

## VII

That the aforesaid action is at issue in the said Superior Court of Los Angeles County, State of California, and is now pending and has not been dismissed.

WHEREFORE, this answering defendant prays that complainant take nothing by its bill and that this answering defendant have judgment for its costs and disbursements expended herein and for such other and further relief as may be just and equitable.

WILLIAM HORSLEY FILM  
LABORATORIES, INC.

By Harry Cohn

Defendant

Loyd Wright

Charles E. Millikan

Frank L. A. Graham

Solicitors and of Counsel

[Endorsed]: Received copy of within Answer this 25 day of July, 1930 Herbert A Huebner by Robert M. McManigal, Attorney for Plaintiff Filed Jul 25 1930 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

ORDER RE INTERROGATORIES

The plaintiff having exhibited to the Court the annexed interrogatories to be answered by the defendants, as indicated in the note at the foot of the interrogatories, and having applied to the Court for an order allowing the plaintiff to file such interrogatories to be answered under oath by the defendant corporations, by respective officers thereof having knowledge of the facts,

IT IS THEREFORE ORDERED that the said interrogatories be filed and served pursuant to Equity Rule 58 and that defendants, Columbia Pictures Corporation, a corporation, and William Horsley Film Laboratories, Inc., a corporation, by respective officers thereof having knowledge of the facts, separately answer such interrogatories as are designated in the note at the foot of the interrogatories to be answered by the respective defendants, that the answers be made under oath and filed within fifteen days after service thereof unless objection in writing be filed within ten days after service.

Los Angeles, California June 14 1930

Wm P James  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION.

CINEMA PATENTS COMPANY, INC., )	)	
a corporation )	)	
	)	Plaintiff ) In Equity
	)	)
vs. )	)	No. R-83-J
	)	
COLUMBIA PICTURES CORPORA- )	)	
TION, a corporation, and WILLIAM )	)	
HORSLEY FILM LABORATORIES, )	)	
INC., a corporation, )	)	
	)	
	)	Defendants. )

PLAINTIFF'S INTERROGATORIES

Now comes the Plaintiff, and having first obtained leave of Court, propounds these, its interrogatories, to be answered as indicated in the note at the foot hereof:

1—Is it true that Columbia Pictures Corporation owns or controls more than fifty per cent of the voting stock of William Horsley Film Laboratories, Inc.? If so, when was such ownership or control acquired?

2—Is it true that Columbia Pictures Corporation had, prior to the filing of this suit, and is having, motion picture film developed, treated or processed by William Horsley Film Laboratories, Inc.,

3—Is it true that William Horsley Film Laboratories, Inc. did, prior to the filing of this suit and does develop, treat or process motion picture film for Columbia Pictures Corporation exclusively?

4—What relation exists between Columbia Pictures Corporation and William Horsley Laboratories, Inc. and when did such relation originate?

5—Who are the officers of Columbia Pictures Corporation?

6—Who are the officers of William Horsley Film Laboratories, Inc.?

7—Is it true that William Horsley Film Laboratories, Inc. occupies quarters within the studio and offices of Columbia Pictures Corporation and has since prior to the filing of this suit?

8—Is it true that on or about June 26th, 1925, William Horsley Film Laboratories, Inc. leased from Chester Bennett Film Laboratories, a California corporation, Frederick B. Thompson, and Grace Seine Thompson, two Spoor-Thompson motion picture film developing machines, and accepted in connection with said lease a license to operate said machines under certain patents, including United States Letters Patent No. 1,281,711?

9—Did William Horsley Film Laboratories, Inc. pay sums of money to the lessors and licensors aforesaid for the use of said machines?

10—Produce and file and serve a copy on plaintiff's counsel a drawing, cut or photograph truly and correctly illustrating the film developing machines as and when first installed and operated.

11—Produce and file and serve a copy on plaintiff's counsel a drawing, cut or photograph truly and correctly illustrating the film developing machines as they were immediately prior to the filing of this suit.

12—Specify what repairs, replacements, changes, modifications, alterations or additions have been made upon each of said machines since first installed and operated, when and by whom and at whose order?

13—How many feet of 35 millimeter film were adapted to be contained at any one time in the developing tanks of each machine as and when first installed and operated?

14—How many feet of 35 millimeter film were adapted to be contained at any one time in the developing tanks of each machine as they were immediately prior to the filing of this suit?

15—For what purpose was this change made?

16—When, by whom and at whose order was this change made?

17—Were both machines operated, in their original condition, for developing positive motion picture film on a commercial scale?

18—How long were they so operated?

19—How many feet of film were developed, treated or processed prior to changing over the machine or machines?

20—Have both, or either, of said machines been operated during the summer of 1929 and/or since for developing negative motion picture film? If so, which of the machines has been so used? And who is responsible for such use.

21—Is it not true that one of said machines was reconstructed with the addition of a second developing unit, including a tank, an extension of the main frame to support same, a set of driving rollers together with associated gears and shafts, and a set of idle rollers, duplicating the developing unit originally in the machine?

22—Is it not true that this second developing unit was added to accommodate the machine to the developing of negative film?

23—Did such changes improve the operation of the machine?

24—Did such changes adapt the machine for the performance of a function of which it was not theretofore capable?

25—What was that function?

26—When and by whom and at whose orders were such changes, referred to in interrogatory 21 made?

27—Has either defendant, within six years prior to the filing of this suit, either manufactured, or used or sold or leased a film developing machine or machines other than the two referred to in the preceding interrogatories? If so, please produce and file and serve a copy on plaintiff's counsel a drawing, cut or photograph of each of same.

NOTE: All of the foregoing interrogatories are to be answered separately by both defendants.

Los Angeles, California June 9 1930

Herbert A Huebner  
Attorney for Plaintiff

[Endorsed]: Filed Jun 14 1930 R. S. Zimmerman,  
Clerk By Edmund L. Smith Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

ANSWERS OF DEFENDANT, COLUMBIA PICTURES CORPORATION TO INTERROGATORIES PROPOUNDED BY COMPLAINANT.

Comes now the defendant, Columbia Pictures Corporation, a corporation, by Samuel J. Briskin, its assistant general manager, and for itself alone, answers the written interrogatories propounded by complainant, in the manner following:

## ANSWER TO FIRST INTERROGATORY:

Yes. On or about August 27, 1929.

## ANSWER TO SECOND INTERROGATORY:

Yes.

## ANSWER TO THIRD INTERROGATORY:

Yes.

## ANSWER TO FOURTH INTERROGATORY:

Since on or about August 27, 1929, Columbia Pictures Corporation has been a stockholder of Wm. Horsley Film Laboratories, Inc.

## ANSWER TO FIFTH INTERROGATORY:

Joe Brandt—President

Harry Cohn—Vice President

Jack Cohn—Secretary and Treasurer

## ANSWER TO SIXTH INTERROGATORY:

Harry Cohn—President

Jack Cohn—Vice President

Al E. Brandt—Secretary-Treasurer

## ANSWER TO SEVENTH INTERROGATORY:

No.

## ANSWER TO EIGHTH INTERROGATORY:

I am informed that this is true and I am also informed that Cinema Patents Company, Inc., is now the owner of the license and lease agreement and the machines mentioned therein and that Wm. Horsley Film Laboratories still uses said machines, pursuant to the terms of said license.

## ANSWER TO NINTH INTERROGATORY:

I am informed that this is true.

## ANSWER TO TENTH INTERROGATORY:

There is attached hereto and marked Exhibit "A", a photograph which I am informed truly and correctly il-



illustrates the said film developing machines, with this explanation: That the machine shown in the left hand part of the photograph is exactly the same as it was when originally installed and operated, and that the other machine was exactly like the one in the left hand portion of the photograph when the second machine was installed.

ANSWER TO ELEVENTH INTERROGATORY:

There is attached hereto and marked Exhibit "A" a photograph which I am informed truly and correctly illustrates both of the film developing machines as they were immediately prior to the filing of this suit and as they are now.

ANSWER TO TWELFTH INTERROGATORY:

I am informed that the machine shown in the left hand portion of Exhibit "A" attached hereto is the same as it was when originally installed. The machine shown in the right hand portion of said photograph, I am informed, correctly and truly illustrates the machine as it now exists with such additions as have been made upon it.

ANSWER TO THIRTEENTH INTERROGATORY:

I am informed, 265 feet in each machine.

ANSWER TO FOURTEENTH INTERROGATORY:

I am informed, 265 feet in the machine shown in the left hand portion of Exhibit "A" and 530 feet in the other machine.

ANSWER TO FIFTEENTH INTERROGATORY.:

I am informed that additional rollers were placed on the machine shown in the right hand portion of Exhibit "A" and additional tank space or capacity was added to it so that the laboratory might be able to obtain a longer time in the development of the film.

## ANSWER TO SIXTEENTH INTERROGATORY:

I am informed that these additional rollers and the additional tank capacity were added about June or July of 1929, upon order of William Horsley.

## ANSWER TO SEVENTEENTH INTERROGATORY:

I am informed that they were.

## ANSWER TO EIGHTEENTH INTERROGATORY:

I am informed that they are still operated for that purpose.

## ANSWER TO NINETEENTH INTERROGATORY:

According to information which I have secured from Wm. Horsley Film Laboratories, Inc., this was approximately 20,231,823 feet.

## ANSWER TO TWENTIETH INTERROGATORY:

I am informed that one of the machines—the one to which the additions were made—has been so used and Wm. Horsley Film Laboratories is, of course, responsible for such use, according to my information.

## ANSWER TO TWENTY-FIRST INTERROGATORY:

I am informed that neither of said machines has ever been reconstructed, but I am also informed that certain additions were made to the one appearing in the right hand portion of the photograph marked Exhibit "A" and that the particulars mentioned in this interrogatory are substantially what was done in making that addition.

ANSWER TO TWENTY-SECOND INTERROGATORY:

This is not true, according to my information.

ANSWER TO TWENTY-THIRD INTERROGATORY:

No. I am informed that the operation of the machine has always remained the same.

ANSWER TO TWENTY-FOURTH INTERROGATORY:

I am informed that the function of the machine remained the same.

ANSWER TO TWENTY-FIFTH INTERROGATORY:

See answer to twenty-fourth interrogatory.

ANSWER TO TWENTY-SIXTH INTERROGATORY:

I am informed that about December of 1927, grooves were machined into the rollers so as to accommodate a smaller film and that in June or July, 1929, the addition referred to in the twelfth interrogatory was made, and I am informed that all of these additions were made upon order of William Horsley, who was general manager of the laboratory.

ANSWER TO TWENTY-SEVENTH INTERROGATORY:

No.

In giving these answers I wish to state that there is no officer of Columbia Pictures Corporation who has personal knowledge of many of the matters inquired into in these interrogatories, and I wish to state that I have conferred with William Horsley and with George Seid, William Horsley having been in charge of the laboratory up to the last of August, 1929, and George Seid having been in charge of it since that time, and I have visited the laboratory and inspected the machines and have had Mr. Seid point out to me the additions which were made in June or July, 1929, and which are described in the foregoing answers and, in giving these answers, by saying, "I am informed," I wish to state that my information has come from William Horsley and George Seid.

COLUMBIA PICTURES CORPORATION

By Samuel J Briskin

Assistant General Manager

Subscribed and sworn to before me this 24th day of July, 1930.

[Seal]

Loyd Wright,

Notary Public in and for said County and State

(Photo.)

[Endorsed]: Received copy of within Answers to Interrogatories this 25 day of July, 1930. Herbert A. Huebner by Robert M. McManigal Attorney for Plaintiff

Filed Jul 25 1930 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk





[TITLE OF COURT AND CAUSE.]

ANSWERS OF DEFENDANT, WM. HORSLEY  
FILM LABORATORIES, INC., TO INTERROG-  
ATORIES PROPOUNDED BY COMPLAIN-  
ANT.

Comes now the defendant, Wm. Horsley Film Labora-  
tories, Inc., by Harry Cohn, its President, and for itself  
alone, answers the written interrogatories propounded by  
complainant, in the manner following:

ANSWER TO FIRST INTERROGATORY:

Yes. On or about August 27, 1929.

ANSWER TO SECOND INTERROGATORY:

Yes.

ANSWER TO THIRD INTERROGATORY:

Yes.

ANSWER TO FOURTH INTERROGATORY:

Since on or about August 27, 1929, Columbia Pictures  
Corporation has been a stockholder of Wm. Horsley Film  
Laboratories, Inc.

ANSWER TO FIFTH INTERROGATORY:

Joe Brandt—President

Harry Cohn—Vice President

Jack Cohn—Secretary and Treasurer

ANSWER TO SIXTH INTERROGATORY:

Harry Cohn—President

Jack Cohn—Vice President

Al E. Brandt—Secretary-Treasurer

ANSWER TO SEVENTH INTERROGATORY:

No.

ANSWER TO EIGHTH INTERROGATORY:

Yes, and William Horsley Film Laboratories, Inc., has  
continued to and still does use said two machines in its

laboratories and has paid royalties for the said use thereof, under said license.

ANSWER TO NINTH INTERROGATORY:

Yes.

ANSWER TO TENTH INTERROGATORY:

There is attached hereto, marked Exhibit "A", a photograph truly and correctly illustrating the two film developing machines as now installed and used in the laboratory. The left hand machine, as depicted and illustrated in said photograph, truly and correctly illustrates both of the machines as and when first installed and operated.

ANSWER TO ELEVENTH INTERROGATORY:

The photograph attached hereto and marked Exhibit "A" clearly and truly illustrates both of said machines as they were immediately prior to the filing of this suit.

ANSWER TO TWELFTH INTERROGATORY:

The machine shown in the left hand portion of Exhibit "A" attached hereto is the same as it was when originally installed. The machine shown in the right hand portion of said photograph has had added to it an enlargement of the developing tank, together with an extension of the main frame to support the same, a set of driving rollers, together with associated gears and shafts and a set of idle rollers. These were added in June or July of 1929, by order of William Horsley. In December of 1926 or January of 1927, a groove was machined in the rollers in the machine shown in the right hand portion of Exhibit "A" so as to accommodate a 16 M/M film, and this groove was machined there upon the order of William Horsley. Both of the matters herein referred to were done by Mr. Horsley as President and General Manager of the corporation.



ANSWER TO THIRTEENTH INTERROGATORY:  
265 feet in each machine.

ANSWER TO FOURTEENTH INTERROGATORY:  
265 feet in one machine and 530 feet in the other machine.

ANSWER TO FIFTEENTH INTERROGATORY:

Additional rollers were placed on the machine shown in the right hand portion of Exhibit "A" and additional tank capacity added to it so that we might be able to obtain a longer time in the development of the film.

ANSWER TO SIXTEENTH INTERROGATORY:

These additional rollers and the additional tank capacity were added in or about June and July of 1929, upon order of William Horsley.

ANSWER TO SEVENTEENTH INTERROGATORY:

Yes.

ANSWER TO EIGHTEENTH INTERROGATORY:

They are still operated for that purpose.

ANSWER TO NINETEENTH INTERROGATORY:

Prior to adding the rollers in June or July of 1929, there had been developed and processed on said machines approximately 20,231,823 feet. The answer to this question is in the knowledge of plaintiff, as this defendant has each month rendered an accounting to Chester Bennett Film Laboratories, to whom payment of royalties has been made.

ANSWER TO TWENTIETH INTERROGATORY:

The machine appearing in the right hand portion of Exhibit "A" has been so used to some extent. William Horsley Film Laboratories.

## ANSWER TO TWENTY-FIRST INTERROGATORY:

It is not true that one of said machines was reconstructed. It is true that additions described in answer to twelfth interrogatory were made in June or July, 1929.

## ANSWER TO TWENTY-SECOND INTERROGATORY:

No. The additions made were not originally made for that purpose.

## ANSWER TO TWENTY-THIRD INTERROGATORY:

No. The operation remained the same.

## ANSWER TO TWENTY-FOURTH INTERROGATORY:

No.

## ANSWER TO TWENTY-FIFTH INTERROGATORY:

See answer to twenty-fourth interrogatory.

## ANSWER TO TWENTY-SIXTH INTERROGATORY:

See answer to twelfth interrogatory.

## ANSWER TO TWENTY-SEVENTH INTERROGATORY:

No.

In answer to the above interrogatories and in particular reference to all interrogatories beginning with No. 7, I have depended upon information given to me by William Horsley, who was the general manager of said Wm. Horsley Film Laboratories, Inc., prior to on or about August 27, 1929, and also upon information given to me by George Seid who has been superintendent of said laboratory since August, 1929.

WM. HORSLEY FILM LABORATORIES, INC.

By Harry Cohn

President.

Subscribed and sworn to before me this 24th day of July, 1930.

[Seal]

Lloyd Wright,

Notary Public in and for said County and State

[Endorsed]: Received copy of within Answers to Interrogatories this 25 day of July, 1930. Herbert A. Huebner, by Robert M. McManigal Attorney for Plaintiff

Filed Jul 25 1930 R. S. Zimmerman, Clerk By Edmund L. Smith Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

NOTICE OF HEARING OF MOTION FOR ORDER  
REFERRING CAUSE TO MASTER

TO COLUMBIA PICTURES CORPORATION, a corporation, and WM. HORSLEY FILM LABORATORIES, INC., a corporation, Defendants, and to LLOYD WRIGHT and FRANK L. A. GRAHAM, Defendants' Attorneys:

You, and each of you, will please take notice that on Monday, September 15, 1930, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, in the court room usually occupied by His Honor, Frank C. Jacobs, Federal Building, Los Angeles, California, we shall bring on for hearing Plaintiff's attached Motion for Order Referring Cause to Master.

Dated at Los Angeles, California, this 10 day of September, 1930.

Herbert A. Huebner  
Robert M. McManigal  
Robert M. McManigal,  
Attorneys for Plaintiff.

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

CINEMA PATENTS COMPANY,	)	
INC., a corporation,	:	
	)	
	:	Plaintiff,
	)	
	:	In Equity
vs.	:	
	)	No. R-83-J.
	:	
COLUMBIA PICTURES CORPORA-	)	
TION, a corporation, and WM. HORS-	:	
LEY FILM LABORATORIES, INC.,	)	
a corporation,	:	
	)	
	:	Defendants.

MOTION FOR ORDER REFERRING CAUSE TO  
MASTER

Now comes Cinema Patents Company, Inc., a corporation, plaintiff, by its attorneys, Herbert A. Huebner, Esquire, and Robert M. McManigal, Esquire, and, under the provision of Federal Equity Rule 59, and the practice of this Court, moves that this cause be referred to David B. Head, Esquire, as Special Master for trial.

In support of this motion we shall rely upon the papers and pleadings on file in this cause, upon the annexed Points and Authorities, and upon the annexed Affidavit of M. J. Siegel.

Dated at Los Angeles, California, this 10 day of September, 1930.

CINEMA PATENTS COMPANY, INC.,  
a corporation,

Plaintiff,

By Herbert A. Huebner  
Robert M. McManigal  
Robert M. McManigal.

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

CINEMA PATENTS COMPANY,	)
INC., a corporation,	:
	)
Plaintiff,	:
	) In Equity
vs.	:
	) No. R-83-J
	:
COLUMBIA PICTURES CORPORA-	)
TION, a corporation, and WM. HORS-	:
LEY FILM LABORATORIES, INC.,	)
a corporation,	:
	)
Defendants.	:

MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiff, at the hearing of the foregoing motion, will rely upon the following:

- Hopkins Federal Equity Rules, 6th Edition, Equity Rules 49 and 59, Notes appended thereto and cases cited.
- Los Angeles Brush Manufacturing Corp. vs. James, 272 U. S. 701, 47 S. Ct. 286, 71 L. Ed. 481.
- Neale v. McCormick, 19 Fed. (2d) 320, (C. C. A. 9).
- Holt Mfg. Co. v. C. L. Best Gas Traction Co., 245 Fed. 354 (D. C. Cal.)
- Hy-Lo Unit and Metal Products v. Potter Radiator Co., In Equity M-62-J.
- Beissel v. Brenneis, In Equity M-20-H.

Herbert A. Huebner  
Robert M. McManigal  
Robert M. McManigal,  
Attorneys for Plaintiff.



lated equipment, and holding patents covering same. Its principal revenue is derived in the form of rentals and royalties paid by laboratories and producers using the Cinema patented machines.

Shortly after its incorporation, Cinema launched this program and acquired ownership of a valuable group of patents, including the two patents here in suit, and a large number of developing machines already located in commercial laboratories and producers laboratories in New York, Chicago, and Los Angeles, as well as sufficient manufactured parts to construct additional machines. Cinema also succeeded by assignment to the rights of the lessor and licensor under numerous agreements including the right to receive rentals and royalties for the use of the machines as covered by the patents.

The investment made by Cinema from the time of its incorporation to date in the patents, the machines and contracts has been substantially over Seven Hundred and Fifty Thousand (\$750,000.00) Dollars.

The patents in suit are two of the principal patents included in this purchase. One of them, Gaumont No. 1,177,697, granted April 4th, 1916 expires in less than three years and the other, Thompson No. 1,281,711, granted October 15th, 1918 has only five years to run.

The alleged infringing machines are not owned by the defendants but are owned by the plaintiff and were originally leased to the defendant, Wm. Horsley Film Laboratories, Inc., considerably prior to the incorporation of the plaintiff, and were acquired by the plaintiff as indicated.

The machines, as constructed and installed, were equipped for developing 35 milimeter positive film and were intended only for that use.

Without the consent of the owner of the machines and patents, the defendants, or one of them, re-constructed both machines so that one is equipped to develop 16 millimeter film as distinguished from 35 millimeter film, and the other is equipped to develop negative film as distinguished from positive film. Neither machine was suitable for these new uses in their original condition.

I am informed and believe that the defendants have used these machines since re-constructing them to develop 16 millimeter film and negative film in addition to 35 millimeter positive film.

It is the plaintiff's practice to furnish different types of machines for these different uses and to lease and license them on a different basis. With the exception of the defendants, all licensees pay a much higher royalty on negative film processed than on positive film.

The territory allotted by the plaintiff under the patents is specific to the use of a particular machine or machines for processing a specific size or type of film and the defendants, by re-constructing the machines and using them in the manner described, have broken into plaintiff's business, deprived it of revenue, and are encouraging plaintiff's other licensees to likewise infringe. Because of this fact, mere recovery of damages or profits will not be adequate and an injunction is necessary to give the plaintiff the relief which is needed. Unless that injunction is granted at an early date the value of plaintiff's large investment will be materially impaired.



The suit was promptly filed and has been at issue since July 25th. I am informed and believe that the condition of the Court calendar is such that the Court cannot possibly try the case this year and the probability of a trial during the first six months of next year is remote.

Uncertainty and delay such as that will work irreparable hardship upon the plaintiff, as only an injunction can give adequate relief, and a long delay in the trial of the case may cause the litigation to survive one or both of the patents. Neither of them have been adjudicated.

I am advised that the Special Master usually appointed by this Court has an open calendar, allowing a wide selection of dates for the trial of this case if reference is made, and under the exceptional circumstances, it appears to me that a reference is essential.

M J Siegel

Sworn to and subscribed before me this 6th day of September, 1930.

[Seal]

Edith M. Coltart

Notary Public New York County

NOTARY PUBLIC, New York County

N. Y. County Clk's No. 164, Reg. No. 2C181

Commission Expires March 30, 1932

[Endorsed]: Received copy of the within Notice, etc this 10 day of Sept 1930 Loyd Wright Attorney for Defendants

Filed Sep 10 1930 R. S. Zimmerman, Clerk By Murray E Wire Deputy Clerk

[TITLE OF COURT AND CAUSE.]

## ORDER REFERRING CAUSE TO MASTER

This cause coming before the court at this time for Order Referring Cause to Master; Robert M. McManigal, Esquire, appearing as counsel for Plaintiff, and Charles E. Millikan, Esquire; appearing as counsel for the Defendants; and it appearing that because of the confusion of the court's calendar there are many other causes entitled to be first heard, including a large number of criminal cases, which are entitled to preference over civil matters as to the trial thereof; and it appearing that Judge James had already filled all available dates for the entire September term before calling the regular September term trial calendar, thereby causing the continuance of all cases on said calendar; and it further appearing that, because of the protracted length of the patent trials, the result has been, and is, that other civil litigants having causes to be tried have not been accorded a fair portion of the time of the court; and it appearing that this condition will continue unless many of the patent causes now pending can be disposed of in a manner herein provided; and, hence, that in order to fairly and within a reasonable time dispose of the business before the court, it is necessary that this order be made:

IT IS NOW ORDERED, that this cause be referred to David B. Head, Esquire, a Special Master, to take and hear the evidence offered by the respective parties and to make his conclusions as to the facts in issue, and recommend the judgment to be entered thereon; the Special Master is authorized and empowered to do all things and to make such orders as may be required to accomplish a

full hearing on all matters of fact and law in issue in this cause. The objection of counsel for Defendants to the making of this order referring the cause to the Master is hereby noted and exception is allowed in favor of the Defendants.

Dated this 26th day of September, 1930.

F. C. Jacobs  
District Judge.

Approved as to form:

Frank L. A. Graham  
Attorney for Defendants.

[Endorsed]: Filed Sep 26 1930 R. S. Zimmerman,  
Clerk By Edmund L. Smith Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

STIPULATION CONTINUING TIME FOR  
TAKING DEPOSITIONS.

It is stipulated by the parties hereto, through their respective attorneys, that the time for commencing the taking of depositions of M. J. SIEGEL, R. C. HUBBARD, MEYER H. LAVENSTEIN and H. J. YATES, JR., heretofore noticed for November 7th, 1930 at 10 o'clock, may be and hereby is continued to Tuesday, November 18th, 1930 at 10 o'clock A. M.

Dated the 1st day of November, 1930.

Herbert A Huebner  
Attorney for Plaintiff  
Nathan Burban  
Attorney for Defendants

[Endorsed]: Filed Dec. 8, 1930 R. S. Zimmerman,  
Clerk, by M. L. Gaines, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

STIPULATION CONTINUING TIME FOR  
TAKING DEPOSITIONS.

It is stipulated by the parties hereto, through their respective attorneys, that the time for commencing the taking of depositions of M. J. SIEGEL, R. C. HUBBARD, MEYER H. LAVENSTEIN and H. J. YATES, JR., heretofore noticed for October 29th, 1930, may be and hereby is continued to Friday, November 7th, 1930 at 10 o'clock A. M.

Dated the 29th day of October, 1930.

Herbert A Huebner

Herbert A. Huebner

Attorney for Plaintiff

Nathan Burban

Attorney for Defendants

[Endorsed]: Filed Dec. 8, 1930 R. S. Zimmerman,  
Clerk, by M. L. Gaines, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

NOTICE OF TAKING DEPOSITIONS

TO THE ABOVE NAMED DEFENDANTS AND TO LOYD WRIGHT, CHARLES E. MILLIKAN AND FRANK L. A. GRAHAM, ESQUIRES, THEIR ATTORNEYS: You and each of you will please take notice that pursuant to the provisions of 28, U. S. C. 639, the depositions of the following named witnesses, and possibly others, all of whom reside more than one hundred miles from the place of trial of this cause, will be taken before Herman Schlesinger, or other notary public, in the office of H. A. Huebner, 20th floor of 1776

Broadway, New York, N. Y., on Wednesday, the 29th day of October, 1930, commencing at the hour of 10 o'clock A. M., and continuing from day to day until completed:

M. J. Siegel, residing at 1515 President Street, Brooklyn, N. Y.

R. C. Hubbard, residing at 669 South 5th Avenue, Mt. Vernon, N. Y.

Meyer H. Lavenstein, residing at 14 Schuyler St., New Rochelle, N. Y.

H. J. Yates, Jr., residing at 6960 Continental Avenue, Forest Hills, L. I., N. Y.

Herbert A Huebner

Herbert A. Huebner

-----  
Robert M. McManigal

Attorney for Plaintiff

ORDER

GOOD CAUSE APPEARING THEREFOR, it is hereby ordered that the plaintiff be permitted to take depositions under the provisions of 28, U. S. C. 639, as set forth in the foregoing notice.

Wm P James

United States District Judge

Receipt of Notice of Taking Depositions acknowledged this 22nd day of October, 1930 C E Millikan Atty for Defendants Filed Dec 8 - 1930 R. S. Zimmerman, Clerk By M L Gaines Deputy Clerk

(Testimony of Arthur Barsam)

[TITLE OF COURT AND CAUSE.]

CONDENSED STATEMENT OF THE EVIDENCE

Mr. Huebner and Mr. Graham stipulated that each party would advance one half of the Master's fees, and one half of the reporter's fees for the Master's copy of the minutes, both fees to be eventually charged as costs.

Mr. Huebner offered in evidence the following patents, which were received and marked as exhibits, to-wit:

U. S. Letters Patent No. 1,177,697 granted April 4, 1916 to Leon Gaumont, Plaintiff's Exhibit No. 1.

U. S. Letters Patent No. 1,281, 711 granted October 15, 1918 to Frederick B. Thompson, Plaintiff's Exhibit No. 2.

Barsam direct

ARTHUR BARSAM,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUEBNER:

My name is Arthur Barsam, I am over 21, live at 1726 West 37th Drive, Los Angeles, and am a tool and die maker. I was subpoenaed to appear here today. I have a machine shop in Hollywood. At times I have done work for the William Horsley Film Laboratories, and the Columbia Pictures Corporation upon motion picture film developing machines. I have visited the laboratory of the William Horsley Film Laboratories, on Sunset Boulevard, at Hollywood; and whenever they asked me to I examined the motion picture film developing machines

(Testimony of Arthur Barsam)

they have there. I ya have seen them, from time to time, over a period of about six years. Prior to June 1st of this year, there were two film developing machines, to my knowledge, in the Horsley Laboratories in Hollywood. On the two machines we did repairing now and then, parts worn out or broken down, that Mr. Horsley used to bring down to us. We had to copy them from the parts we had, and make them accordingly. We made gears, and lead weights, and repaired worn down rollers. We had to scrape them off and recut the grooves.

During the summer months of 1929, we had one job there that run a few days, and that was, Mr. Horsley himself added a tank on the rear end of the machine, of one of them. We made some parts, so as to make it come into a little longer machine than what they had before. We did not build the tank. We copied the gear box he had and made the gears similar to what they had on there, composition as well as brass, and some composition like babbitt, that goes on the bottom of the tank that holds the bearings, so as to center the rollers on there. That is about all I know. We made two rollers, I believe, composition, similar to the ones he had. I didn't personally install these parts that I made up. My helpers did it. I couldn't tell you their names. I had so many that come and go. They did it under my instructions. I didn't see the machine after these new parts had been put on. My partner went there. My partner is Mr. Tollar. Our shop also did some machining of grooves in the rollers. We simply bought the material and copied what he had. We did all this work under instructions from Mr. Horsley, and furnished the parts that we made up to the Horsley Laboratories—machined the parts for him, and bought the material. Sometimes he bought the material himself. We were operating independently, but not under contract with them; it was time and material.

MR. GRAHAM: No cross-examination.

(Testimony of James A. Tollar)

Tollar Direct

JAMES A. TOLLAR,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUEBNER:

My name is James A. Tollar, I live at 1962 North New Hampshire, Hollywood, and am a machinist; partner of Mr. Barsam who just left the witness stand. I am personally familiar with the developing machines in the Horsley Laboratories in Hollywood. They had two of them there, up to June of this year. Before June of this year we extended one tank. When I say "we", I mean the machine shop. I heard the description Mr. Barsam gave. His description of the parts that we made and furnished to the Horsley Laboratories is correct. I have nothing to add to what he said. I saw the machine upon which these new parts went, and had seen it prior to the time the new parts were put on.

MR. HUEBNER: At this time, before further questioning the witness, I wish to offer in evidence the plaintiff's interrogatories, and the answers of both defendants to the interrogatories.

THE MASTER: All right. They will be considered in evidence. I don't think they need to be given a designation.

THE WITNESS RESUMES:

Referring to the photograph designated as Exhibit A, attached to the answers to the interrogatories, that appears to me to illustrate the machines in the laboratory.



(Testimony of William Horsley)

Those machines are not both in the condition that they were in when I first saw them; one has one tank additional; that is all. When I first saw them, they were both the same size, as to units. The original machine is on the left side, looking direct at the picture, and the machine on the right is the one that had the extra tank added to it. The function of that extra tank and the rollers and gears associated with it is to develop. Our shop machined some grooves in the additional rollers what we made. I don't remember the width of those grooves that we machined in those rollers.

I think it was in June, 1929, that we did this work for the Horsley Laboratories relating to the additional unit on the machine. Since that time we have done nothing except repairs, just a broken down gear, or something like that, worn out parts; never more than one or two pieces at a time.

MR. GRAHAM: No cross examination.

Horsley Direct

WILLIAM HORSLEY,

called as witness on behalf of Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUEBNER:

My name is William Horsley, I am past 60, my residence is at 6075 Sunset Boulevard, Hollywood. My occupation is that of motion picture laboratory proprietor. I am not now an officer of the defendant William Horsley Laboratories, Incorporated; up until August, 1929, I was president of the company. I have not held any office

(Testimony of William Horsley)

since that time, in the William Horsley Laboratories. At the time I was president of the Laboratories, Columbia Pictures, Incorporated, had no interest in the Horsley Laboratories. They later acquired complete ownership. I don't remember the exact date when that happened. I think it was in August, 1929. I was president or some other officer of the Horsley Laboratories from the day that it was organized, some time early in 1924 until August 1929.

I am, of course, familiar with the developing machines in that laboratory. I operated them.

“Q When those machines were originally acquired and installed in the laboratory what sized film were they adapted and intended to develop?”

A Intended to develop any kind of film that I chose to put on them.”

The machines were equipped originally for developing a certain width of film, 35 millimeters. I did develop 35-millimeter film on both of those machines for about one year. 35-millimeter film is commonly referred to as standard width motion picture film. After the first year I adapted one of the machines to develop 16-millimeter film. I made that adaptation by cutting the grooves 16 millimeters wide in the middle of the rollers. The rollers were originally grooved for a clearance of 35 millimeter film.

“Q Do those grooves, for the accommodation of 16-millimeter film, show in the photograph annexed to the answers to the interrogatories?”

A These rollers are grooved for 35, that are in here now. I would like to correct the previous statement,

(Testimony of William Horsley)

where I said I altered two machines. I only altered one. One machine was the only one that was changed to 16.

Q Do the 16-millimeter grooves show in the one machine you altered?

A No.

Q Can you see them in the picture?

A The grooves that show on there are Universal Roller. The company that I had the contract with refused to let me have repair parts, and I had to purchase them from the Universal Film Company. Consequently they don't show the same type of groove."

The machine on the right is the one which was altered. I can't say whether the rollers in that machine shown on the right side of the picture are provided with the 16-millimeter grooves; I haven't seen those machines for more than a year. When I last saw them, some of the rollers were. It made no difference whether you put 35 or 16 through on the same rollers. The laboratory developed 16-millimeter film on these machines after they had been grooved for the 16-millimeter work. The development of 16-millimeter film on that machine amounted to millions of feet of film; it was practically 90 per cent of my business. The 16-millimeter, for the last three years. Most of the grooves in the rollers were machined by the machine shop where the machines were made, the Chester Bennett Laboratories, at my instructions.

In 1929 there were some further changes made on the machine. We added one more section to the developing end of one of the machines. The parts that went into that additional developing section were identically the same as the ones in the machine. We made or acquired

(Testimony of William Horsley)

parts, and duplicated the developing tank that was already in the machine; and used both developing sections after we had the new section added; developed several thousands of feet of 35-millimeter film on the machine that we changed by adding that section to.

The function of that additional developing section was to give us a longer period of development. It was customary in developing practice to give negative film the equivalent of four times as much developing time as positive film. We did not make any changes in the dryer of that machine. The machine on the right side of the photograph is the one that was changed. At the time I sold to *Colbia Pictures* I was operating that changed machine with the addition of the developing unit for developing negative film.

Horsley Cross

### CROSS EXAMINATION

BY MR. GRAHAM:

The machine on the left-hand side of the picture has never been used for developing negative film nor has it been used for 16 millimeter. These different uses of machines which I had in the laboratory for developing a smaller width film and also negative film were solely on the one machine. I referred to having certain changed rollers cut down in size by the concern that built these machines. That was the Chester Bennett Film Laboratories. They installed them. That work was done under a contract which I had with them. This instrument in writing which you have shown me is the contract I referred to. That is my signature. James is the man that owned the laboratory and Mr. Thompson and his wife.

(Testimony of William Horsley)

Referring to this Fred B. Thompson whose signature appears on here, I recognize him in the courtroom. He is sitting there in the chair, the inventor of the machine. This is the agreement under which those machine were installed in our laboratory and operated.

MR. GRAHAM: We offer in evidence this license agreement identified by the witness as Defendants' Exhibit A, and ask leave of court to substitute for this original contract a copy.

MR. HUEBNER: There is no objection to the copy.

THE MASTER: There is a copy marked Exhibit A attached to the answer of the Columbia Pictures Corporation; and I will mark it in this case as Defendants' Exhibit A.

(Defendants' Exhibit A.)

WITNESS RESUMES:

After entering into this agreement and having the machines installed, I paid 25 cents per thousand feet royalty. I continued to pay royalty after these changes were made that I have testified to, which converted one machine into a 16 millimeter machine. Every month they got a return. And those royalties were accepted by the parties to the contract that put the machines in our laboratory. We paid royalty on the 16-millimeter film that was run through the machine from about the month of March, 1926, until the end of August, 1929. The method employed for developing this 16-millimeter film is absolutely the same as that used for developing the 35-millimeter film. The method employed for developing negative film is the same as that employed for developing positive film,

(Testimony of William Horsley)

except for the longer period of time required for developing the negative. So far as the operation of the machines is concerned they are identical. The changing of the rollers so that we could use the one machine for developing 16-millimeter film was done in the shop of one of the parties to the contract, the Chester Bennett Laboratories.

When we were about to make this other change which I have testified to, that is, the addition of the developing tank to the one machine, I requested the Chester Bennett Laboratories to furnish me with parts. They told me to write a letter on it. I wrote a letter making the request but they never answered it; and they positively refused to let me have parts. The Chester Bennett Laboratories previous to my requesting these parts had been sold out to the Consolidated Film Industries, and they were the ones that refused to furnish me with the parts.

Horsley Redirect

REDIRECT EXAMINATION

BY MR. HUEBNER:

I have no copy of that letter I say I wrote asking for these parts. I left it in the office of Mr. George K. Spoor a year ago last November. I do not remember the date of the letter. It was about the month of May, 1929. In the letter I asked them to furnish me one extra section for my developing machine and also to state the price they would charge me. I told them I wanted to make the machine, or one section, longer to develop negative. I think I stated that in the letter, although I am not positive of it. Anyway, I made it clear to them that I wanted to put on another section on the developing end of the machine so that I could develop negative film. I received

(Testimony of William Horsley)

no reply to the letter. They ignored me completely. I wrote the letter to the Chester Bennett Laboratories. They were operating as the Chester Bennett Laboratories, Mr. George Yates, manager.

I accepted their failure to answer this as a refusal to furnish me those parts, and went ahead and had the parts made outside, by Barsam and Tollar. I got the tank from the Pacific Tank & Pipe Company. I did not obtain any of the parts from the Chester Bennett Film Laboratories.

I did not write any letter to the Chester Bennett Film Laboratories advising them of the changes that I had made.

Prior to the time that I changed this machine over I had not developed negative film on either of those two machines; I had, however, developed positive film on both machines, running into the millions of feet. The machines had at all times operated satisfactorily in the development of positive film. I was quite enthusiastic about their operation, and I am yet.

The change I made was not to improve the operation of the machine so far as the development of positive film was concerned. It was for the purpose of making the machine so that I could develop negative on it, and for that purpose only. The developing machine that was altered was used to develop negative film immediately after it was reconstructed, and was used more or less continuously for that purpose until I sold the laboratory.

(Testimony of William Horsley)

Horsley Recross

REXCROSS EXAMINATION

BY MR. GRAHAM:

We paid royalties on the negative after we changed the one machine to handle negative.

The machine which has not been changed or which has not been made so that it would handle negative film, can develop negative film. Mr. Thompson, the inventor of the machine, had access to the laboratory at all times and used to visit us about every two weeks, and knew what was going on at all times. Mr. Thompson was one of the parties to the contract and the inventor of the machine. He had no connection at that time with the Bennett Film Laboratories. At the time of building the machines he had been the supervisor of the machine shop.

Horsley Redirect

REDIRECT EXAMINATION

BY MR. HUEBNER:

Royalty payments were made by the laboratory after the development of negative film was begun only for the month of July and the month of August, 1929, to my personal knowledge. Those payments were based on the same rate of royalty per foot as we had theretofore paid for developing positive film, 25 cents per thousand. Those payments were made by check to the Chester Bennett Film Laboratories. No report accompanied the checks except the number of feet, I believe, that the royalties called for; just the number of feet of film developed at 25 cents per thousand and the check for the amount that we computed. That was all that went with the check. In those reports we combined the total footage of both negative and positive, as "motion picture film," and we didn't specify whether it was negative or positive.



(Testimony of George Seid)

Seid Direct

GEORGE SEID,

called as a witness on behalf of the Plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUEBNER:

My name is George Seid; my age 40 years; I live at 542 North Fuller, Hollywood; a laboratory technician for Horsley Film Laboratories. I am the superintendent of that laboratory, having occupied that position since the 1st of September, 1929.

The Horsley Laboratories, defendant in this case, developed negative motion picture film in its laboratory between the time I went there and the 1st of June, 1930, by the use of a developing machine. There were two developing machines in the laboratory during that period, and we used both of them for the development of negative film.

I am familiar with the machines in the laboratory. The photograph annexed to the defendants' answers to interrogatories, is a true and correct illustration of the machines that were in use there prior to June, 1930. We developed negative film on the machine shown on the left-hand side of the picture in exactly the same maner as the other side, only that one took a shorter time of development than the other. Either side could be adapted, or could be used, for developing negative film.

Q But I asked you if the one on the right-hand side of the picture is not better suited for developing negative film than the one on the left side of the picture.

A Just that it takes you a longer time of development.

(Testimony of George Seid)

Q And for that reason it is better suited, isn't it?

A Not necessarily.

Q How long a developing time did you allow for the development of negative film in the machine on the left side of the picture?

A Between four and five minutes.

Q And how long a time did you allow in that same machine for the development of positive film?

A About three minutes or three and a half minutes.

Q How much negative film did you develop in that machine on the left-hand side of the picture during that time?

A Oh, I would say an average of about six to ten thousand feet a night.

Q And how much in the machine on the right side of the picture?

A Approximately the same.

Q During what period did that occur?

A Since we have been operating the plant; since the 1st of September until the present time.

Q When you say "since we have been operating the plant" whom do you mean by "we"?

A The Horsley Film Laboratories.

Q. What developing time did you allow for the development of film in the machine on the right side of the picture?

A Anywheres between seven and ten minutes.

Q Did you use the same developing solutions in both machines for negative work?

A The ingredients were the same but were of different proportions.

(Testimony of George Seid)

Q In other words, you had a much stronger solution in the machine that had only one tank, didn't you?

A No. They were practically the same as to actual strength. They were being used for a different result in the negative.

Q What type of negative did you develop in the positive machine?

A One known as a sound track.

Q. Not a picture negative?

A No; it didn't have a picture but it had an exposure.

Q For the benefit of the court and to preserve the record, explain the difference between a picture negative and a sound track negative.

A The sound track negative is an exposure placed upon film through a recording device. Picture negative is an exposure placed upon film through a camera.

Q And contains images of action?

A It contains images of action.

Q And the sound track negative contains a strip along the edge of the film representing visually sound waves?

A That is correct.

Q The development of a sound track negative ordinarily and commonly requires less time than the development of a picture negative, does it not?

A It does with us.

Q And in that respect it more nearly resembles positive film?

A You couldn't give it the same treatment as you give positive film. It requires a special and entirely different solution to develop the sound track than it would positive film.

(Testimony of George Seid)

Q But the time of development is approximately the same as for positive film, isn't it?

A It runs closer to that range; yes.

Q And all your picture negative has been developed in the machine which has the additional developing unit included, is that true?

A That is true.

That negative machine, being the one on the right side of the photograph, was in use by the defendant for developing negative film at the time this suit was commenced in June of 1930. The Horsley Laboratory has used that machine for that purpose since the filing of this suit and is now using it for that purpose.

Seid Cross

### CROSS EXAMINATION

BY MR. GRAHAM:

I referred to the machine on the right-hand side of the photograph as having an additional developer tank. Assuming that that partition between the two developer tanks was removed, you would in fact have a single developer tank. I have seen machines of the Spoor-Thompson type where they had a longer wet end and a longer drying space than the machines of the Horsley Laboratories. By a longer wet end I mean additional tanks carrying added solutions. They were Spoor-Thompson machines.

Basing my answer on my experiences in the development of motion picture film, I would say that that machine on the left-hand side of the photograph could be used for developing negative picture film without any change in the construction of it as it stands now.

(Testimony of George Seid)

Seid Redirect

REDIRECT EXAMINATION

BY MR. HUEBNER:

Assuming we attempted to develop picture negative in that positive machine, for one thing, we would have to concentrate our solution, known as the developing solution. We would have to have a stronger developing solution. We would increase the hardening qualities of the hypo and slow down the actual running of the machine. The machine has a speed change on it. We have run the machine as slow as 10½ minutes and we have run it as fast as 2 minutes.

Q It is considered better practice, however, is it not, to develop picture negative with a weaker solution and a longer period of time than with a strong solution for a short period of time?

A Well, that is just a matter of judgment on account of the nature of the work going through.

Q What I describe as more suitable—it has been the practice in your laboratory, hasn't it?

A I wouldn't say that. In the manner in which we are controlled, or control it, we could get our exposure handled in that manner which would adapt it to any speed of development we desired.

Q As a matter of fact, however, prior to the filing of this suit the defendant laboratory did not develop any picture negative in that positive machine, did it?

MR. GRAHAM: Just a minute. That is limited to the time that the witness was with the company?

MR. HUEBNER: That is understood.

Q And the answer is what?

(Testimony of George Seid)

A We never used that positive machine for negative developing of pictures.

Q Will you explain why you used the negative machine after its reconstruction for the developing of picture negative?

A So that we could retain a better rate of speed. Where the one would slow our speed down, we were taking advantage of that other tank and holding that speed up.

Q The quality didn't have anything to do with it?

A Well, of course, the quality naturally was in getting the advantage of it.

Q By the use of the negative machine?

A Yes.

Q The quality was improved?

A Yes.

MR. HUEBNER: That is all.

Seid Recross

### REXCROSS EXAMINATION

BY MR. GRAHAM:

Q But as far as the operation of these two machines is concerned they operate in the same manner, do they not?

A Yes, sir.

MR. GRAHAM: That is all.

MR. HUEBNER: I would like to ask counsel at this time whether they care to admit incorporation and citizenship of the plaintiff or whether I will have to offer in evidence a certificate of incorporation.

MR. GRAHAM: We will admit it.

(Testimony of George Seid)

MR. HUEBNER: I would like to call the Master's attention to the fact that title in the plaintiff in the patents in suit is admitted in the answer.

I now offer in evidence the depositions of M. J. Siegel and R. C. Hubbard and the exhibits attached thereto.

THE MASTER: Is there any objection?

MR. GRAHAM: No objection.

THE MASTER: They may be received.

MR. HUEBNER: The plaintiff rests.

MR. GRAHAM: We offer in evidence a certified copy of the first amended complaint in a suit in the Superior Court of the State of California in and for the County of Los Angeles, entitled Cinema Patents Company, Inc., a corporation, plaintiff, vs. William Horsley Laboratories, Inc., a corporation, defendant." I understand that you have stipulated that that suit is still pending. Is that correct?

MR. HUEBNER: Yes. I stipulate that suit is pending.

MR. MILLIKAN: It is at issue.

THE MASTER: That will be Defendants' Exhibit B. (Defendants' Exhibit B.)

MR. GRAHAM: We offer in evidence a patent to Frederick B. Thompson, No. 1,328,464, issued on the 20th of January, 1920, which is referred to and is a part of the license agreement.

THE MASTER: Defendants' Exhibit C. (Defendants' Exhibit C.)

MR. GRAHAM: Also a copy of a patent to Frederick B. Thompson, No. 1,260,595, issued on the 26th day of March, 1918. That is another patent under license.

(Testimony of George Seid)

THE MASTER: Defendants' Exhibit D.

(Defendants' Exhibit D.)

MR. GRAHAM: And a patent to Frederick B. Thompson, No. 1,299,266, issued on the 1st day of April, 1919.

(Defendants' Exhibit E.)

MR. GRAHAM: And also a patent to Frederick B. Thompson, No. 1,569,156, issued on the 12th day of January, 1926. And it shows on the face of the patent, "This patent was issued on an application filed February 9, 1924, Serial No. 691,633," identified in the license agreement.

(Defendants' Exhibit F.)

MR. GRAHAM: And a patent to Frederick B. Thompson, No. 1,587,051, issued on the 1st day of June, 1926, on an application filed February 9, 1924, Serial No. 691,634.

GEORGE SEID,

recalled as a witness on behalf of the Defendants, testified as follows:

DIRECT EXAMINATION

BY MR. MILLIKAN:

I am familiar with the license agreement which is in evidence as Defendants' Exhibit A, the license agreement between the William Horsley Film Laboratories and the Chester Bennett Film Laboratories, Frederick B. Thompson and Grace Seine Thompson. I don't know of any agreement between the William Horsley Film Laboratories and the Chester Bennett Film Laboratories with the Cinema Patents Company whereby the parties mutually consented to the termination of that agreement.



(Testimony of H. A. Huebner)

Seid Cross

CROSS EXAMINATION

BY MR. HUEBNER:

I am not an officer of either defendant corporation.

H. A. HUEBNER,

called as a witness on behalf of the Defendants, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. MILLIKAN:

On the 3rd day of May, 1930, I was an officer of the Cinema Patents Company, Incorporated, the plaintiff in this action, and have been such officer continuously since that time. I do not know of any agreement or mutual consent between the plaintiff in this action and the defendant William Horsley Film Laboratories, Inc., by the terms of which the license agreement which is in evidence as Exhibit A has been terminated, cancelled or annulled. I am assistant secretary of the corporation.

MR. GRAHAM: Defendants rest.

MR. HUEBNER: No rebuttal.

DEPOSITIONS of R. C. Hubbard and M. J. Siegel, taken at 1776 Broadway, New York, N. Y., on November 18th, 1930, at 10:00 o'clock A. M., pursuant to the attached notice and stipulation, before Arthur C. Smith, a Notary Public, New York County, New York.

(Testimony Roscoe C. Hubbard.)

### APPEARANCES

HERBERT A. HUEBNER, (471 Chamber of Commerce Building, Los Angeles, California), Attorney for Plaintiff.

DANIEL V. MAHONEY, (165 Broadway, New York, N. Y.) Attorney for Defendants.

ROSCOE C. HUBBARD,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

### DIRECT EXAMINATION

BY MR. HUEBNER:

My name is Roscoe C. Hubbard; residence, 669 South Fifth Avenue, Mt. Vernon, New York; age, 52; occupation, motion pictures engineer, in which occupation I have been engaged for about twenty-five years. I am now employed by the Consolidated Film Industries, having been with that concern ever since the inception of the company, about six years ago, I think it is.

I started to design and build motion picture machinery at the beginning of my work, twenty-five years ago. The first machine I designed and built was a printing machine which was known as the Nestor Printer; after that, a numbering machine that printed the names on the edge of the film. After that a camera which was supposed to be a continuous camera and overcame the patents that were known as the Erb Camera. Later I designed a polishing machine, developing machines, printing machines and obtained patents on some of them. I am not a patent solicitor, but I have had occasion during my work as an engineer to read and consider United

(Testimony Roscoe C. Hubbard.)

States patents. I made a study of patents on film developing machines at one time; that is the only thing I went into to any extent.

MR. HUEBNER: I ask to have marked for identification a plain copy of the Gaumont Patent No. 1,177,697, granted April 4, 1916, for developing, fixing, toning and otherwise treating photographic films and prints.

(Marked Plaintiff's Exhibit No. 1 for identification.)

WITNESS RESUMES:

Referring to this Gaumont patent which is marked for identification Plaintiff's Exhibit 1, I have read and am familiar with it.

MR. HUEBNER: I will ask to have marked for identification the original United States Letters Patent No. 1,281,711, granted upon the application of Frederick B. Thompson, October 15th, 1918, for photographic film-treating apparatus.

(Marked Plaintiff's Exhibit 2 for identification.)

Q11 Have you read and are you familiar with the Thompson patent 1,281,711, Plaintiff's Exhibit 2 for identification?

A Yes.

MR. HUEBNER: Will you stipulate permission for me to withdraw the original by substitution of printed copies later?

MR. MAHONEY: I will so stipulate.

MR. HUEBNER: I ask to have marked for identification the answers of defendant William Horsley Film Laboratories to interrogatories propounded by plaintiff, a copy of which was served upon counsel for plaintiff.

(Marked Plaintiff's Exhibit 3 for identification.)

(Testimony Roscoe C. Hubbard.)

Q12 Referring to these answers of the defendant William Horsley to plaintiff's interrogatories, Plaintiff's Exhibit 3 for identification, have you examined the photograph attached to these answers marked "A"?

A Yes, sir, there are two Spoor-Thompson developing machines; one of which seems to be a positive machine and the other a sort of make-shift negative machine, I should say.

WITNESS CONTINUES:

My understanding of the Gaumont patent is that it is a machine consisting of vertical tanks and a mechanism to feed the film through in a spiral winding path. I understand the spiral is called helical. His description is very plain to me. The mechanism itself consists of two parallel shafts, one above and one in the lower portion of the tank, and he drives or pulls his film by means of toothed sprockets, the lower rollers being idle and the upper rollers being idle with the exception of the two end rollers, which have toothed sprockets. This machine was practicable and worked satisfactorily, but Thompson came to know, discovered a novel means of improving it. I should say that the first machine was slow in operation; the Gaumont machine was slow in operation. Thompson eliminated the toothed sprockets and drove by means of a friction take-up which operated slightly faster than the remaining mechanism, pulled the film into it, so that the rollers would drive. By this method he increased the speed of the machine approximately four-fold. The course of the film was similar in both of them; the film travels a spiral winding path. I have seen actual machines built in accordance with my understanding of the

(Testimony Roscoe C. Hubbard.)

Gaumont patent as well as the Thompson patent; and I have seen both the Gaumont and the Thompson machines in operation. I have seen and watched the operation of Thompson machines to a great extent. Gaumont I have seen in operation and I have examined the machines carefully, but I have not watched the operation for any length of time. I am familiar, however, with the mode of operation of both types of machine.

In answer to a previous question I stated that the photograph, Exhibit A, being a part of Plaintiff's Exhibit 3 for identification, shows one Spoor-Thompson machine for positive use and one for negative use. The reason I say one is a positive machine is because it has the regulation lay-out of the Spoor-Thompson machine for positive use. In observing the right-hand machine in the photograph I observe that additional rollers and tanks have been provided for developing, which leads me to believe that while it is not fully carried out as manufacturers do carry out a machine for negative, that this has been prepared for developing negatives.

The effect, in the treatment of film, of the additional tank that I observe in the machine on the right side of the picture is to allow the film to remain in the developing solution double the length of time that it would in the positive machine.

Comparing the machine on the right side of this photograph Exhibit A with the machine on the left-hand side of the photograph, I see in the machine on the right side additional idler rollers in addition to the frame welding which is plainly discernible, and there are undoubtedly driving rollers which cannot be seen, which must be

(Testimony Roscoe C. Hubbard.)

down in the bottom of the tank, vertical shafts which operate these driving rollers, also gear boxes, each set of rollers having to have a separate gear box.

I am familiar with the developing machine which the Cinema Patents Company, Plaintiff, manufactures and installs for the processing of motion picture film. Cinema Patents manufactures separate machines for positive and for negative developing. In the negative machines additional tanks are added for developer solution, additional rollers and mechanism are added to feed the film through these tanks; additional tanks are added for washing; additional rollers and mechanism are added for feeding the film through these washing tanks. Additional compartments are added to the dry chambers, in some cases.

As I see the machine shown on the left hand side of this picture "A", it is not suitable for developing negatives. The machine on the right side can be used for developing negatives. Quite an advantage in result would be obtained by the use of the machine on the right side of the picture for developing film over the use of the machine on the left side of the picture. That advantage would lie in the increased time in which film would remain in the developing solution. In order to obtain proper photographic quality in negative, it is necessary to develop at least three times as long as positive. In actual minutes, the developing time of negative and positive in motion picture laboratory practice is for positive an average time of four minutes; for negative an average time of twelve minutes.

The machine on the left side of the picture "A" is adapted to accommodate 35 millimeter film. The ma-

(Testimony Roscoe C. Hubbard.)

chine on the right side of the picture is adapted to accommodate 16 millimeter film, and 35 millimeter film; the 35 millimeter rollers are grooved out in the center, so that they are the proper width to take 16 millimeter film.

Hubbard Cross

### CROSS EXAMINATION

BY MR. MAHONEY:

Before I entered the employ of Consolidated Film Industries, I worked for Erbograph Laboratories; Crystal Film Laboratories before that. I designed machines referred to in my direct evidence both before and after I was employed by Consolidated. I first saw a Gaumont machine in operation approximately ten years ago. I had seen film developing by machine before that time, by the Erbograph machine. That was not generally similar to a Gaumont machine. It had means for feeding the film, but it was a horizontal machine, not a vertical machine, quite different. I had seen film developed by hand. It was wound on racks; the racks were inserted in the tanks, and the film was allowed to remain in the tanks until it was developed. The film was wound on the racks by either turning the racks and the man winding it on manually, or we did have machines for winding it on. The position of the film on the racks after it had been wound on the racks was a spiral winding. It was customary to wind the film on the racks with the emulsion side uppermost. It was also customary in developing by hand to leave the negative films in the tanks a longer time than the positive films.

My study of patents has been mere reading of the patents and a study of the machines disclosed in the

(Testimony Roscoe C. Hubbard.)

patents. I would not attempt to pass on the scope of the claims of a patent, or any legal question of that character. My mind is not a legal mind at all. It is my understanding from an examination of this picture "A" of Plaintiff's Exhibit 3 for identification that the machines shown there were built by the Spoor-Thompson Company, they have the patent numbers on the front casting here, and they appear identical.

The normal daily output of a Gaumont machine as designed by Gaumont was about 10,000 feet, and the normal daily output of the Thompson machine is 40,000 feet. I first saw a Gaumont machine and a Thompson machine about ten years ago, both at about the same time. The Gaumont machine I saw in the Gaumont laboratories, in Flushing, Long Island; and the Thompson, if I remember rightly, I saw in the Universal Film Laboratories at Fort Lee, New Jersey.

In modifying the positive developing machine for use on negative film, you add additional tanks and the rollers or other parts normally associated with those tanks, and the driving mechanism. It is merely the addition of additional tanks and a battery of units. I could qualify that to some extent, because in a machine properly designed for negative, the designer takes other precautions, such as being able to run it by hand should the motor fail, and things of that sort. The developing time for both positive and negative films varies in different laboratories, and even varies in the same laboratories. It is a matter of density desired in the final film. There have been no changes in practice since sound track has been printed on film, respecting the time in which the film is developed.



(Testimony Roscoe C. Hubbard.)

The average practice is practically the same; it is pretty hard to change that. Any change in developing time in moving picture film equipped with sound tracks has been very slight. It is a matter of standardizing more than it is a matter of change. The variation is very much more limited than it was, but the general average would be about the same.

Hubbard Redirect

REDIRECT EXAMINATION

BY MR. HUEBNER:

I have seen and examined the developing machines in the Long Island laboratory of Paramount. Those machines are similar to the machines illustrated in the photograph "A" which is part of Plaintiff's Exhibit 3 for identification. I believe there are five positive machines which are similar to the one observed in the left hand side of the picture, and there is one negative machine there. That negative machine corresponds in the matter of number of developing tanks and the mechanism connected therewith with the machine shown on the right hand side of the photograph "A". The Consolidated Film Industries in the east here use three of these Spoor-Thompson machines at the New York plant and twelve at the Fort Lee plant, all positive machines. Consolidated has no Spoor-Thompson negative machines.

MR. MR. HUEBNER: I offer in evidence Plaintiff's Exhibits for identification Nos. 1, 2 and 3 respectively, as exhibits 1, 2 and 3.

(Plaintiff's Exhibits Nos. 1, 2 and 3 for identification were thereupon received in evidence.)

(Testimony of Morris J. Siegel)

Hubbard Recross

RE CROSS EXAMINATION

BY MR. MAHONEY:

In testifying in regard to the photograph "A" which forms part of Plaintiff's Exhibit 3, I had not read the answers which constitute the remainder of Exhibit 3. I had not seen anything except the photograph. My answers to various questions are based solely on what I saw by an examination of that photograph.

Roscoe C. Hubbard

Subscribed and sworn to before me this 29th day of November, 1930.

Arthur C. Smith

Notary Public Queens County, New York Certificate  
filed in New York County, No. 1432.

MORRIS J. SIEGEL,

called as a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HUEBNER:

My name is Morris J. Siegel; age 33; address 1550 President Street, Brooklyn, New York; occupation, president Cinema Patents Company, Inc., which office I have held from the inception of the corporation. I believe it was organized on February 20, 1930. Its principal place of business is at 1776 Broadway, New York City. The principal business of the plaintiff company is to manufacture, lease and license developing machines, for the purpose of developing motion picture film. The plaintiff does include in its business some related equipment, but the principal business is the developing machine business.

(Testimony of Morris J. Siegel)

The plaintiff company owns Spoor-Thompson and Gaumont developing machine patents, relating to motion picture developing machines. These include the Gaumont patent 1,177,697 which is Plaintiff's Exhibit 1, and the Thompson patent 1,281,711 which is Plaintiff's Exhibit 2. These two patents were acquired by the plaintiff corporation on April 16th, 1930.

The revenue and income of the Cinema Patents Company is largely derived from royalties from the licensing of machines. The Cinema Patents Company paid for the group of patents that I have referred to as the Gaumont and Thompson patents, something in excess of \$500,000. in cash. That represented the entire investment of the company so far as those patents were concerned, but not the full investment of the Cinema Patents Company in machines and equipment and patents. Subsequent to its incorporation, Cinema Patents Company acquired by assignment license and leasing agreements which the prior owners of the Gaumont and Thompson patents had with Paramount-Publix Corporation, H. E. R. Laboratories, Spoor-Thompson, and Eastman Kodak Company. Another license was concluded directly between Cinema and Consolidated Film Industries. I did not mention any lease with the William Horsley Laboratories, because we have considered the equivalent of no lease existing because of their breaching the lease. Cinema Patents Company regards the Horsley Laboratories as an infringer of the patents. The arrangement between Cinema Patents Company and Paramount-Publix with respect to ownership of the licensed machines is such that the ownership of the machines is vested in Cinema

(Testimony of Morris J. Siegel)

Patents, and the machines are leased to Paramount for the term of the agreement. The same is true in the H. E. R. Laboratories contract as in the Paramount-Publix lease. The same is true in the Consolidated Laboratories agreement with the exception, as I understand, Consolidated paid for some of the machines prior to our acquisition of the patents, which they would naturally own. There are fourteen Cinema owned machines in laboratories of Consolidated and used by Consolidated. In addition to those 14, Consolidated operates its own machines by virtue of license from Cinema Patents under the patents in suit. Consolidated pays royalty to Cinema on all machines it has; that is, the ones in which the title is vested in Cinema Patents and the one which they operate under royalty.

Paramount-Publix, H. E. R. Laboratories, Spoor-Thompson Company as well as Consolidated which I have already mentioned, pay royalties to Cinema Patents Company for the right to use the developing machines referred to. I am familiar with the books of the Cinema Patents Company; they are kept under my direction. The total amount of royalties received by Cinema Patents Company under the licenses and leases that we have been discussing, from the time Cinema acquired the Gaumont and Thompson patents down to and including the 31st of October, 1930, is approximately \$250,000. I am not at liberty to disclose the rate of royalty which each one of those licensees pays to Cinema Patents Company. The Eastman Kodak Company does not pay the plaintiff any royalties under its license. By virtue of the agreement of the acquisition of the Gaumont patents, they had an

(Testimony of Morris J. Siegel)

exclusive use of the Gaumont machines for sixteen millimeter developing without any royalty payment to Cinema Patents. I believe Eastman Kodak Company pays royalty to prior owners of the Gaumont patents; at least I know that the agreements require them to.

These licensees that I have mentioned pay the plaintiff a different royalty per foot on negative film than they pay on positive film developed. It is more on the negative than it is on positive. That is true of all the licensees I have mentioned with the exception of the Eastman Kodak.

I am familiar generally with the Cinema developing machine which was formerly referred to as the Spoor-Thompson developing machine. I have seen them in operation. I have seen the machines that are in the H. E. R. Laboratories and those that are in the Paramount-Publix laboratory, also the machines that are in the Consolidated laboratories.

Q49 Will you please look at the photograph "A", which is a part of Plaintiff's Exhibit 3; do you recognize the subject of that picture?

MR. MAHONEY: Objected to on the ground the witness has not been properly qualified to answer the question.

A. Yes, I recognize them as two developing machines.

Q50 Are the developing machines in the Paramount-Publix laboratory, the H. E. R. laboratory and the Cinema machines in the Consolidated laboratory similar or dissimilar to the machines illustrated in the photograph "A"?

(Testimony of Morris J. Siegel)

MR. MAHONEY: My objection following the last question will be understood to be a continuing objection to all questions relating to comparisons between the various machines mentioned in this question and the machines shown in the photograph.

A They are the same.

Siegel Cross

CROSS EXAMINATION

BY MR. MAHONEY:

Cinema Patents Corporation obtained title to the Thompson and Gaumont patents from the Spoor-Thompson Company. The license agreement between William Horsley Laboratories and some owner of the Thompson patent was executed prior to the acquisition of these patents by Cinema Corporation.

I do not know whether Cinema Patents Company knew of this agreement at the time they obtained title to the patents. The agreement was known after we obtained title, anyhow. I read the agreement some months ago. It forms a part of defendant's answer in this suit. When Spoor-Thompson Corporation assigned these patents to Cinema, it reserved a license to itself and it has two machines in operation under this license. The circumstances surrounding their license are slightly different from Consolidated's license in that the title to these two machines is vested in Spoor-Thompson so long as they used it for themselves; in other words, without the right to assign to anybody else. If they should, then the ownership of those machines becomes vested in Cinema Patents.

(Testimony of Morris J. Siegel)

The rate of royalty paid by the various licensees, with the exception of Eastman, is a uniform rate for positive film, and while I am not at liberty to divulge the actual royalty payments, that is, the percentage, the arrangements also provide for volume. The Eastman license gives to Eastman Kodak Company the right to develop film up to 25 millimeters.

Cinema Patents Company, Inc. is a subsidiary of Consolidated Film Industries, Inc. The stock of Cinema Patents Company, Inc. is held by Consolidated Film Industries.

"XQ71 Is it not true that there is a suit pending in the State Courts of California at the present time in which Cinema Patents Corporation is the plaintiff and William Horsley Laboratories is the defendant, based on the license to William Horsley Laboratories?"

MR. HUEBNER: That question is just a little misleading. I will stipulate that a suit is pending based on a violation and breach of the license that you refer to.

MR. MAHONEY: I cannot stipulate that.

MR. HUEBNER: Then let the witness answer the question.

A. Yes, there is such a suit.

XQ72 And one of the prayers of that suit is for the recovery of unpaid license or royalty fees, is it not?"

MR. HUEBNER: That is objected to as incompetent. The complaint on file shows that the prayers are in that suit pending in the State Court.

A I prefer to refer to my file before I answer the question. It is."

(Testimony of Morris J. Siegel)

Siegel Redirect

REDIRECT EXAMINATION

BY MR. HUEBNER:

“RDQ73 Is it not also true, Mr. Siegel, that another prayer of this amendment complaint in the State Court case asks the Court to declare the license agreement, terminated and that the property, that is, the machines, in the hands of the defendant, be returned to the plaintiff?

A It is true.

BY MR. MAHONEY:

Q74 Which suit was filed first, the State Court suit or the present suit for patent infringement, do you know?

A The State Court suit was filed first.

Q75 And there has not been any decision in that State Court suit, has there?

A No decision.”

It appears from the answers in Exhibit 3 that certain changes and additions were made on one of the developing machines in the Horsley Laboratories. The Cinema Patents Company did not know that those changes and additions had been made at the time that the Cinema Patents Company acquired the Thompson and the Gaumont patents.

M. J. SIEGEL.

Subscribed and sworn to before me this 29th day of November, 1930.

Arthur C. Smith

Notary Public Queens County, New York Certificate  
filed in New York County, No. 1432  
Commission expires March 30th, 1932.



STATE OF NEW YORK        )  
                                          ) SS  
COUNTY OF NEW YORK    )

I, ARTHUR C. SMITH, a Notary Public in and for the County of Queens and State of New York, (certificate filed in New York County), duly commissioned, and qualified and authorized to administer oaths, and to take and certify depositions.

DO HEREBY CERTIFY that pursuant to notice served in the cause pending in the United States District Court, Southern District of California, Central Division, wherein Cinema Patents Company, Inc., a corporation, is Plaintiff, and Columbia Pictures Corporation, a corporation, and William Horsley Film Laboratories, Inc., a corporation, are defendants. I was attended at the office of H. A. Huebner, 1776 Broadway, New York, N. Y., by the witnesses Roscoe C. Hubbard and Morris J. Siegel and by Herbert A. Huebner, Counsel for Plaintiff, and Daniel V. Mahoney, Counsel for Defendants, as herein set forth.

That the said witnesses were of sound mind and lawful age and were by me first carefully examined and cautioned and sworn to testify to the truth, the whole truth and nothing but the truth; and they thereupon testified as herein shown; that the said depositions were given orally in the form of questions and answers and were taken down stenographically by me, a stenographer of the offices of Sidney C. Ormsby Company, law re-

porters, 217 Broadway, New York City, skilled in these matters and approved by counsel for the parties; and that the said depositions were thereafter reduced to typewriting, and that the witnesses read their respective deposition and signed their names thereto.

That the exhibits as herein set forth are hereto annexed.

That the taking of said depositions was begun on November 18th, 1930, at 10:00 A. M., in the forenoon and was concluded on November 22nd, 1930, in the forenoon.

I DO FURTHER CERTIFY that I am neither of counsel to either of the parties to said suit, nor in anywise interested in the event of said cause.

IN WITNESS WHEREOF I have hereunto set my hand and seal the 29th day of November 1930.

Arthur C. Smith

Notary Public Queens Co, N. Y. Cert filed in New York Co. #1432

The amendments to the statement are approved, and the statement with amendments is approved

April 16, 1932

Wm P. James

Dist Judge

[Endorsed]: Lodged Apr. 6, 1932. R. S. Zimmerman, Clerk, by Theodore Hocke, Deputy Clerk Filed Apr. 19, 1932. R. S. Zimmerman, Clerk, by Edmund L. Smith, Deputy Clerk

[TITLE OF COURT AND CAUSE.]

REPORT OF SPECIAL MASTER

TO THE HONORABLE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION:

The undersigned, DAVID B. HEAD, appointed Special Master by an order of this Court entered September 26, 1930, directing him to hear the evidence and report his conclusions and recommendations to the court, herewith submits his report.

By agreement of the parties the cause was set down for the taking of testimony, and on December 23, 1930 there appeared for the plaintiff Herbert A. Huebner, Esq., and for the defendants C. E. Millikan, Esq. and Frank L. A. Graham, Esq. The testimony was taken and the cause submitted upon the filing of briefs.

The action is in equity for infringement of Letters Patent Nos. 1,177,697 and 1,281,711. The title to the first patent, which was issued to Leon Gaumont, is now vested in the plaintiff. Its subject matter relates to the developing of photographic films, particularly films in elongated strips used in motion picture machines. Both a process and an apparatus are described. The apparatus is so constructed that a film placed in the machine for developing is passed over rollers and continuously and successively moved through tanks containing the various developing fixing and toning solutions used in the development of photographic film.

The second patent in suit was issued to F. B. Thompson, and the title to it is now vested in the plaintiff. It is

directed to a film treating apparatus operating on the same principle as the Gaumont machine but with the addition of certain refinements, designed to facilitate the movement of the film through the several baths. The film passes over rollers or spools grooved to guide the film.

There being no issues raised as to the validity and scope of the patents in suit it is not necessary to make a detailed examination of the patents. Certain facts concerning the development of motion picture film must be noted, whose relevancy will become apparent. First, that there are two types of film to be developed: the negative which is the film that comes from the camera, and the positive, which are printed from the negative in any number desired, resulting in reversal of lights and shadows of the negative. The positive films are used in the projection of the motion picture on the screen. The development of negative film requires a longer period of treatment in the bath of developing fluid than in the case of positive film, relatively two to four times. Second, that the greater volume of film developed is of two sizes, 35 millimeter film used in the commercial production of motion pictures and 16 millimeter film, used in the amateur production of motion pictures.

The facts which are not in dispute are as follows:

On June 26, 1925 an agreement—Defendants exhibit A, was entered into between the Chester Bennett Film laboratories, a Corporation, Frederick B. Thompson, Grace Seine Thompson of one party and William Horsley Laboratories, Inc. of the other party, whereby for a consideration the parties first mentioned agreed to install two motion picture film developing machines in the laboratory of the other party, and further granting a license

to use the invention of several patents including, among others, the patents in suit and any future patents for improvements on the subject matter of the patents. The contract provided for the payment of certain rentals and royalties.

Thereafter two film developing machines were installed in the William Horsley Film Laboratories. These machines were equipped with tanks suited only to the development of positive film and with spools or roller grooves to accommodate 35 millimeter film. After using one of the machines for some time, in 1926 the William Horsley Laboratories cut narrower guideways in the spools which carried the film, thereby adapting the machine to develop 16 millimeter film. The other contracting parties continued to receive payments of rentals and royalties after this date with knowledge of the change.

In June or July 1929 the William Horsley Laboratories, without the consent of the other contracting parties or their successors, added to the same machine an additional developing tank together with the other parts necessary to carry the film through the tank, thereby adding to the time the film could be treated in the developing fluid, and adapting the machine to the development of negative film. The plaintiff has succeeded to the rights under the contract of the Chester Bennett Laboratories, and the Thompsons, while the Columbia Pictures Corporation have succeeded to the rights of the William Horsley Film Laboratories.

From its brief it is evident that plaintiff no longer urges the change to accommodate 16 millimeter film as an infringement. Regardless, the acquiescence of plaintiff and its predecessors, in this use and their acceptance of pay-

ments of royalties on 16 millimeter film that was developed, place the plaintiff in a position where it cannot ask for equitable relief.

The plaintiff contends that the addition of the second developing tank and its use in the development of negative film infringes the patents in suit. The defendants admit that the use of the altered machine is covered by the patents in suit but that they are licensed by the agreement of June 26, 1925 to make such use of the machine. The patents under which the license was granted make no distinction between the development of positive and negative films, so it is at least clear that the defendants could use the machines in their original condition for this purpose.

The license relied upon in the paragraph numbered 1 grants a license "to use two machines for treating processing and developing photographic film" for the term of the patents previously recited and any other patents for improvements that might issue.

The paragraph numbered 5 is a lease of the machines to the user, with the right "to use maintain and operate". The other parts of the contract relate to royalties, option to purchase and installation. The question raised requires interpretation of the contract. The plaintiff contends that the license is subservient to the demise of the two machines, while the defendants contend that the license portion of the contract is unconditional in nature and grants the right to use any and all of the disclosures of the patents recited, together with the right to alter the installed machines to permit such use.

A contract must be interpreted by taking into consideration the contract as a whole, together with the matter

to which it relates—Section 1641 and 1647 Civil Code of California. A consideration of the contract as a whole discloses that its purpose is *th* provide for the leasing and use of two specific developing machines. The license while in general and broad terms is evidently intended to be in aid of and to protect the lessee in the use of the machines.

Therefore, it follows, that the license has no broader scope than to grant a right under the patents recited, to use, maintain and operate the machines which were the subject matter of the contract. The machines which were the subject matter of the contract are those referred to in the evidence and illustrated by the photograph Exhibit "A" attached to defendants answer to plaintiff's interrogatories.

The machines in question were designed, built and used for several years for developing positive film. These circumstances indicate that parties intended such a use to be made of machines at the time the contract was entered into.

That the licensee of a machine has a right to make repairs to remedy wear or breakage is clear from the authorities. He may maintain it in its original condition by repairs so long as the machine as a whole retains its identity.

Several authorities have been cited. The plaintiff relies upon *George Close Co. vs Ideal Wrapping Machine Co.* 29 Federal (2nd) 533. Herein the plaintiff had furnished the defendant with a machine for cutting candy into certain sizes. The defendants changed the machine by putting in a fewer number of cutting knives together with altering the operating means, thus permitting the

machine to cut caramels in larger sizes than before. Finding that this constituted a reconstruction of the machine, resulting in a different machine, producing a different result, the court found infringement. In *Miller Hatcheries, Inc. vs. Buckeye Incubator Co.* 41 Federal (2nd) 619 the defendant having previously purchased an incubator from the plaintiff, made changes in the incubator consisting of adding additional hatching trays and making changes in other features such as increasing the air supply, which resulted in substantially increasing the capacity of the machine. The court held that this constituted infringement. The defendant calls attention to a decision of the Supreme Court of the District of Columbia in *Tabulating Machine Co. vs Durand* 156 O. G. 258 (apparently not reported in the Federal Reporter). Herein the court held that changes made in a machine for sorting cards, which permitted the machine to sort a larger size of cards did not constitute infringement. If this case is in conflict with the decisions of the First and Eighth Circuit Courts of Appeal referred to above, the Circuit Court decisions being of higher authority must govern.

From the state of facts presented, a change which consists of adding an additional unit which permits the development of a different kind of film than the machine could theretofore develop, goes much further than change which increases the capacity of a machine (*Miller Hatcheries Case supra*) or vary the size of the product (*Candy cutting machine case supra*). The machine produces a



different result than that for which it was leased, and therefore licensed.

The contention that inasmuch as no change was made in the parts of the original machine there could be no reconstruction is not valid. It does not matter whether it constitutes reconstruction or something else. It is pertinent only to find whether or not the changes made come within the grant "to use, maintain and operate" as heretofore interpreted. The master concludes that it does not and it follows that the patents in suit are infringed.

It is concluded:

1. That title to Letters Patent Nos. 1,177,697 and 1,281,711 is vested in the plaintiff.
2. That said Letters Patents are good and valid in law.
3. That said Letters Patent are infringed by the defendants use of the altered developing machine heretofore described.

It is recommended that a decree be entered in conformity with this report, finding the Letters Patent in suit infringed and directing that an accounting of profits and damages be had.

The foregoing portion of this report was submitted to counsel in the form of a draft. The defendants filed certain exceptions. The first three exceptions go to the expressions that the original machines were suited only to the development of positive film, that such was the intention of the parties, and that the development of negative film in the reconstructed machine produced a different result. The master is satisfied that these statements in

the report are correct. However, it is not the intention of the master to recommend a decree that will restrain the defendants from using the machines in their unaltered condition for the development of any particular type of film.

The fourth exception goes to the law of reconstruction. It was the masters intention to refer to the cases cited on this point as a guide to the interpretation of the grant "to use, maintain, and operate", rather than to reach a definition of the word "reconstruct". On the defense of the license the contract must govern, and the construction placed upon its language, together with a consideration of the subject matter of the contract as well as the construction placed upon the contract by the parties are all elements to be considered. The expression that "it does not matter whether it constitutes reconstruction or something else" (page 8, line 21 supra) should be read in conjunction with the following sentence, which makes it clear that it does not matter as long as the use complained of does not come within the license grant of the contract.

The defendants' exceptions do not appear to be well taken and the report is being filed as drafted.

Returned herewith are the original files in the case together with a transcript of the testimony taken, the exhibits filed, and the briefs and other papers filed in the proceedings before the Special Master.

Respectfully submitted,

David B Head.

David B. Head

Special Master

[Endorsed]: Filed Jun 26 1931 R. S. Zimmerman,  
Clerk By Edmund L. Smith Deputy Clerk

[TITLE OF COURT AND CAUSE.]

DEFENDANTS' EXCEPTIONS TO MASTER'S  
FINAL REPORT

Now come Defendants and file their exceptions to the Special Master's Final Report in the above entitled case:

EXCEPTION No. 1

The Special Master erred in finding that "These machines were equipped with tanks *suited only* to the development of positive film", (Italics ours) (Master's Report pg. 4, lines 1 to 3,) and in finding that "The machines in question were designed, built and used for several years for developing positive film. These circumstances indicate that parties *intended* such use to be made of machines at the time the contract was entered into." (Italics ours.) Master's Report pg. 6, line 23, et seq.

EXCEPTION No. 2

The Special Master erred in finding that—"From the facts presented, a change which consists in adding an additional unit which permits the development of *a different kind of film than the machine could theretofore develop*, goes much further than a change which increases the capacity of a machine (Miller Hatcheries case supra) or vary the size of the produce (Candy Cutting Machine case supra). The machine produces a different result than that for which it was leased and therefore licensed." Master's Report, pg. 8, (Italics ours).

EXCEPTION No. 3

The Special Master erred in holding that "The contention that inasmuch as no change was made in the parts of the original machine there could be no reconstruction is not valid".

## EXCEPTION No. 4

The Master erred in finding "That said Letters Patent are infringed by defendant's use of the altered developing machine heretofore described."

## EXCEPTION No. 5

The Master erred in finding that "A consideration of the contract as a whole discloses that its purpose is to provide for the leasing and use of two specific developing machines." (Master's Report, pg. 6, lines 9 to 11.)

## EXCEPTION No. 6.

The Special Master erred in not finding that the present licensor in filing suit in the Superior Court for Cancellation of the license and collection of royalties, which suit was pending at the time the present suit for infringement was filed, had made an election which precluded the Licensor from maintaining the present suit for infringement.

Los Angeles, California, July 15, 1931.

Respectfully submitted,

Loyd Wright

Charles E. Millikan

Frank L. A. Graham

Attorneys for Defendants.

[Endorsed]: Received copy of within Exceptions this 15th day of July, 1931. Herbert A. Huebner, Robert M. McManigal, attorneys for plaintiff. Filed Jul. 15, 1931 R. S. Zimmerman, Clerk by Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

RULING ON EXCEPTIONS TO MASTER'S  
REPORT.

This action was brought by plaintiff to have an injunction and to recover damages and profits for the alleged infringement of letters patent No. 1,177,697 and No. 1,281,711. The case was referred to a special master, who made his report, finding infringement and recommending a decree accordingly. Exceptions were taken by the defendants to the report, and have been presented by oral argument of counsel.

The predecessors in interest of the plaintiff, then the owners of patent rights under the second numbered patent and other patents issued and applied for, in June, 1925, entered into a contract with the defendant William Horsley Film Laboratories, Inc. The patents had to do with the developing and processing of photographic film used in the production of motion pictures. The contract referred to recited, first, the fact of the issuance of the patents by number and the fact of pending applications, and that the defendant last named was desirous of acquiring a license to operate two machines "for treating, processing and developing photographic films, which machines and apparatus connected therewith are the invention of the said Frederick B. Thompson, and the subject of the aforesaid patents and patent applications", and that the defendant named "was desirous of having the parties of the first, second and third part construct and install the two machines for treating, processing and developing photographic films at the place of business of the party of the fourth part in the film laboratory of

the party of the fourth part. \* \* \* Therefore said parties \* \* \* have and do hereby agree together as follows: '1. Parties of the first, second and third part do hereby grant to the party of the fourth part the right, liberty and license to use two machines for treating, processing and developing photographic films for the full term of any and all of the aforesaid patents granted to the party of the second part, and all other patents that may be granted to the party of the second part on the aforesaid patent applications, or for any improvements thereon, for the consideration, period of time and under the conditions hereinafter expressed.' The conditions following provided for the installation of two machines by the first contracting parties and that the defendant named should, on the completion of the installation, pay ten per cent. of the cost of the construction and such installation, which was to be credited against the license charge which was fixed at one-fourth of one mill per foot for all films developed and processed.

The licensee proceeded to use the machines that were installed in the development of positive film for several years. The development of negative film required that the film be treated longer in the various solutions used, although the testimony was that both machines might be used for the development of either kind of film. In order to better handle negative film, the licensee installed on one machine an additional tank to hold developing fluid and necessary rollers and gears to carry the film through such additional tank. It is because of this act that infringement is charged. The licensee did not reconstruct any of the principal parts of the machine nor alter its method of operation.

The contention of the defendants is that under their license contract, they were to have the benefit of the invention described in the patents and that the addition of the developer tank and appurtenances, merely operating to make the tank perform more effectually the functions designed in the patents, is within their right as licensees.

The master found to the contrary, although he expressly found that the license granted was "to use the invention of the several patents including, among others, the patents in suit and any future patents for improvements on the subject matter of the patents." He found that the machine "produces a different result than that for which it was leased and therefore licensed." The first finding referred to hardly sustains the conclusion of the master last stated. My conclusion is, after an examination of the record, that the license agreement authorized the use of two machines in the processing of films in any way so long as that use was within the description of the invention as disclosed by the patents which were referred to in the agreement. It follows that the acts of the defendants did not constitute infringement.

The further matter urged in defense, to-wit: that prior to the bringing of this suit the plaintiff had commenced an action in the state court to terminate the lease contract and recover royalties, asserting the change made in the developing machine as cause therefor, thereby electing to waive the right to bring an action for infringement, need not be discussed in view of the conclusion already arrived at.

The exceptions of defendants to the master's report, insofar as they propose objections which have been disposed of in the foregoing discussion, are sustained.

Decree is ordered to be entered in favor of the defendants. An exception will be noted upon plaintiff's behalf.

Dated September 17, 1931.

Wm P James  
U. S. District Judge

[Endorsed]: Filed Sep 17 1931 R. S. Zimmerman,  
Clerk By Murray E Wire Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

ORDER ADOPTING COURT'S RULING ON EX-  
CEPTIONS TO MASTER'S REPORT AS FIND-  
INGS OF FACT AND CONCLUSIONS OF  
LAW.

The above entitled cause coming on to be heard upon the exceptions of the Defendants, Columbia Pictures Corporation and William Horsley Film Laboratories, Inc., to the Master's Report herein, after hearing the arguments of counsel of the respective parties the Court filed an Opinion under date of September 17, 1931, entitled "Ruling on Exceptions to Master's Report".

It is hereby ordered that the said Opinion entitled "Ruling on Exceptions to Master's Report" filed herein be and the same is hereby adopted in lieu of and with the same force and effect as Findings of Fact and Conclusions of Law.

Dated this 11 day of January, 1932.

Wm P James  
Judge.



APPROVED AS TO FORM AS PROVIDED IN  
RULE 45.

Herbert A Huebner  
Attorney for Plaintiff  
by W. D. Foster.

[Endorsed]: Filed Jan 11 1932 R. S. Zimmerman,  
Clerk By Murray E Wire Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

FINAL DECREE

THIS CAUSE having come on to be heard upon the pleadings and proof filed and produced on behalf of both parties and having been submitted on brief by counsel for both parties,

NOW THEREFORE, upon consideration thereof it is hereby ordered and adjudged and decreed as follows:

(1) That the Bill of Complaint herein be and the same is hereby dismissed.

(2) That defendants have and recover judgment against plaintiff for the sum of \$230.20, defendants' costs and disbursements herein, said costs to be taxed by the Clerk of this Court.

Wm P James  
District Judge.

APPROVED AS TO FORM AS PROVIDED IN  
RULE 45.

Herbert A Huebner  
Attorney for Plaintiff.

Decree entered and recorded JAN 11 1932  
R. S. Zimmerman Clerk.  
By Murray E Wire Deputy Clerk,

[Endorsed]: Filed Jan 11 1932 R. S. Zimmerman,  
Clerk By Murray E Wire Deputy Clerk

[TITLE OF COURT AND CAUSE.]

## PETITION FOR APPEAL

The Plaintiff, Cinema Patents Company, Inc., conceiving itself aggrieved by the final decree entered herein on the eleventh day of January, 1932, does hereby appeal from the said decree to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors which is filed herewith; and it prays that this appeal may be allowed and a citation granted directed to the above named Defendants, Columbia Pictures Corporation and Wm. Horsley Film Laboratories, Inc., commanding them and each of them to appear before the United States Circuit Court of Appeals for the Ninth Circuit to do and receive what may appertain to justice in the premises; and that a transcript of the record, proceedings, exhibits, and papers upon which said decree was made, together with a copy of the opinion filed herein, be duly authenticated and sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioners further pray that the proper order relating to the required security to be furnished by it be made.

CINEMA PATENTS COMPANY, INC.

By Herbert A Huebner

Ward D. Foster

Attorneys for Plaintiff

Dated at Los Angeles March 25, 1932

ORDER ALLOWING APPEAL

The foregoing Petition is hereby allowed, Plaintiff to file a cost bond in the sum of Two Hundred & Fifty Dollars.

Wm P James  
United States District Judge

Dated, March 29, 1932

[Endorsed]: Filed Mar 29 1932 R. S. Zimmerman,  
Clerk By Theodore Hocke Deputy Clerk

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[TITLE OF COURT AND CAUSE.]

ASSIGNMENT OF ERRORS

Now comes the Cinema Patents Company, Inc., Plaintiff in the above entitled cause, by its attorneys, and presents, with the accompanying Petition for Appeal from the final decree entered herein, the following Assignment of Errors upon which it will rely in the prosecution of its appeal from the decree entered herein by the United States District Court for the Southern District of California on the 11th day of January, 1932:

I. That the court erred in refusing to adopt the recommendations and sustain the conclusions of the Special Master.

II. That the court erred in finding that the license agreement authorized the use of two machines in the

processing of film in any way so long as that use was within the description of the invention as disclosed by the patents which were referred to in the agreement.

III. That the court erred in finding United States Letters Patent No. 1,177,697 to Leon Gaumont, not infringed.

IV. That the court erred in finding United States Letters Patent No. 1,281,711 to Frederick B. Thompson, not infringed.

V. That the court erred in ordering, adjudging and decreeing "That the Bill of Complaint herein be and the same is hereby dismissed."

VI. That the court erred in ordering, adjudging and decreeing "That the Defendants have and recover judgment against Plaintiff for the sum of \$320.20, Defendants' costs and disbursements herein . . . ."

VII. That the court erred in not granting the relief prayed for in the Bill of Complaint for infringement of said United States Letters Patents No. 1,177,697 and No. 1,281,711.

CINEMA PATENTS COMPANY, INC.

By Herbert A Huebner

Ward D. Foster

Attorneys for Plaintiff

Dated at Los Angeles March 25, 1932

[Endorsed]: Filed Mar 29 1932 R. S. Zimmerman,  
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

NOTICE OF LODGMENT OF CONDENSED  
STATEMENT OF THE EVIDENCE

To Messrs. Frank L. A. Graham, Esq.  
C. E. Milliken, Esq.  
Lloyd Wright, Esq.  
Subway Terminal Building  
Los Angeles, California

PLEASE TAKE NOTICE that we have this day lodged with the Clerk of the above court a condensed statement of the evidence herein in accordance with Equity Rule 75 and that we shall ask Honorable William P. James, a judge of this court, to approve such statement of evidence at his chambers in the Post Office and Federal Building, Los Angeles, California, at 1:30 o'clock in the afternoon on April 18th, 1932, or at such other time and place as said judge may decree.

Herbert A Huebner

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Attorneys for Plaintiff

Dated, April 6th, 1932

Copy received this 6th day of April, 1932.

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Frank L A Graham

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Attorneys for Defendants

[Endorsed]: Filed Apr 6 1932 R. S. Zimmerman,  
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION

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IT IS HEREBY STIPULATED by the parties to the above entitled cause, through their respective attorneys, that the transcript on appeal heretofore taken by plaintiff need not repeat the title of the cause in any paper included in the transcript other than the Bill of Complaint, and that there may be likewise omitted from the transcript all endorsements on the backs or covers of such papers, except those relative to service of copy, or identification as evidence, provided that the endorsement as to filing in each instance appear and be printed. This stipulation is entered into to save expense and encumbrance of the record.

Dated at Los Angeles, California, April 21st, 1932.

Herbert A. Huebner

Ward D. Foster

Attorneys for Appellant

Lloyd Wright

Charles E Millikan

Frank L A Graham

Attorneys for Appellees.

[Endorsed]: Filed Apr 21 1932 R. S. Zimmerman,  
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

STIPULATION

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IT IS HEREBY STIPULATED, subject to the approval of the Court, that there shall be prepared five (5) copies of an indexed book of exhibits, one of which shall be served with copy of the record in this case upon defendants, and another to be retained by plaintiff, and three (3) to be filed with the United States Circuit Court of Appeals to accompany the record on appeal, which book of exhibits shall contain copies of the following documents introduced during the trial of said cause:

Plaintiff's Exhibit 1, Gaumont Patent No. 1,177,697  
Plaintiff's Exhibit 2, Thompson Patent No. 1,281,711  
Defendants' Exhibit C, Thompson Patent No. 1,328,464  
Defendants' Exhibit D, Thompson Patent No. 1,260,595  
Defendants' Exhibit E, Thompson Patent No. 1,299,266  
Defendants' Exhibit F, Thompson Patent No. 1,569,156  
Defendants' Exhibit G, Thompson Patent No. 1,587,051.

IT IS FURTHER STIPULATED that the Clerk of the District Court shall be requested to forward to the Clerk of the United States Circuit Court of Appeals the above Exhibits.

Dated at Los Angeles, California, this 21st day of April, 1932.

Herbert A. Huebner  
Ward D. Foster  
Attorneys for Plaintiff-Appellant

Lloyd Wright  
Charles E Millikan  
Frank L A Graham  
Attorneys for Defendants-Appellees

IT IS SO ORDERED, this 25 day of April, 1932.

Wm P James  
District Judge.

[Endorsed]: Filed Apr 27 1932 R. S. Zimmerman,  
Clerk By Edmund L Smith Deputy Clerk

SEYLER-DAY CO. Gen. Agts  
1120 Corporation Bldg.  
724 So. Spring St.  
LOS ANGELES  
California.

[TITLE OF COURT AND CAUSE.]

UNDERTAKING ON APPEAL

WHEREAS, the Plaintiff in the above entitled action is about to appeal to the Circuit Court of Appeals for the Ninth District at San Francisco, California, from a decree entered against it dismissing the bill of complaint in said action in said United States District Court Southern District of California, Central Division, in favor of the Defendants in said action on the 11th day of February, 1932,

NOW THEREFORE, in consideration of the premises and of such appeal, the undersigned NATIONAL SURETY COMPANY, a corporation organized and existing under the laws of the State of New York, and duly authorized to transact a general surety business in the State of California, does hereby undertake and promise on the part of the Appellant that said Appellant will pay all damages and costs which may be awarded against it on the appeal, or on a dismissal thereof, not exceeding TWO HUNDRED FIFTY (\$250.00) DOLLARS, to which amount it acknowledges itself bound.

IN WITNESS WHEREOF, the said Surety has caused these presents to be executed and its official seal attached by its duly authorized Attorney in Fact at Los Angeles, California, the 5th day of April, A. D. 1932.

NATIONAL SURETY COMPANY  
Arden L. Day (seal)  
ATTORNEY IN FACT.





[TITLE OF COURT AND CAUSE.]

PRAECIPE

To the Clerk,

United States District Court,  
Southern District of California.

You are hereby requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following, and no other papers and exhibits, to-wit:

1. Bill of Complaint.
2. Answer of Defendant Columbia Pictures Corporation, including "Exhibit A" attached thereto.
3. Answer of Defendant Wm. Horsley Film Laboratories, Inc., omitting "Exhibit A" and "Exhibit B" attached thereto.
4. Plaintiff's Interrogatories and Order Re Interrogatories.
5. Answer of Defendant Columbia Pictures Corporation to Interrogatories Propounded By Complainant, including annexed photograph "A".
6. Answers of Defendant Wm. Horsley Film Laboratories to Interrogatories Propounded By Complainant, omitting the annexed photograph "A".
7. Motion For Order Referring Cause to Master, Notice of Hearing same, and Affidavit of M. J. Siegel in support of same.
8. Order Referring Cause to Master.
9. Notice of Taking Depositions and Order re same.

10. Stipulation Continuing Time For Taking Depositions.

11. Condensed Statement of Evidence, including Depositions of Roscoe C. Hubbard and M. J. Siegel reduced to narrative form, omitting from the deposition Exhibits No. 1, No. 2 and No. 3.

12. Order Approving Condensed Statement of Evidence.

13. Report of Special Master, being the Draft Report of Special Master as amended by substitution of new page 9 and additional page 10.

14. Ruling by Honorable Wm. P. James, District Judge, on Exceptions to Master's Report.

15. Order Adopting Court's Ruling on Exceptions to Master's Report as Findings of Fact and Conclusions of Law.

16. Final Decree.

17. Petition for Appeal with Order Allowing Appeal.

18. Assignment of Errors.

19. Original Citation on Appeal.

20. Notice of Lodgment of Statement of Evidence.

21. This Praecipe and Service Thereon.

22. Clerk's Certificate.

#### Plaintiff's Exhibits

No. 1. Certified Copy of United States Letters Patent No. 1,177,697 to Leon Gaumont.

No. 2. Certified Copy of United States Letters Patent No. 1,281,711 to Frederick B. Thompson.

#### Defendants' Exhibits

United States Letters Patent:

C. No. 1,328,464 to Frederick B. Thompson

D. No. 1,260,595 to Frederick B. Thompson

E. No. 1,299,266 to Frederick B. Thompson

F. No. 1,569,156 to Frederick B. Thompson

Said transcript to be prepared as required by law and the Rules of this Court, the Rules of the United States Circuit Court of Appeals for the Ninth Circuit, and the Federal Equity Rules, and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit on or before the 27th day of April, 1932.

Dated at Los Angeles, April 6th, 1932

Herbert A Huebner

Ward D. Foster

Attorneys for Appellant

Service of the above Praecipe accepted and acknowledged this 6th day of April, 1932.

Frank L. A. Graham

-----  
Attorneys for Appellee

[Endorsed]: Filed Apr 6 1932 R. S. Zimmerman,  
Clerk By Theodore Hocke Deputy Clerk

[TITLE OF COURT AND CAUSE.]

APPELLEE'S PRAECIPE.

To the Clerk,

United States District Court,

Southern District of California.

You are hereby requested to include in the transcript of record to be filed in the United States Circuit Court of Appeals, for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, the following papers and exhibits:

1. Defendants' Exceptions to Master's Final Report, (this refers only to the numbered Exceptions, and does

not include the written argument offered in connection with such Exceptions, Exceptions to be printed being the same as attached hereto and marked "Praecipe Exhibit A").

2. Appellee's Praecipe and service.

Defendants' Exhibits.

Defendants' Exhibit B, (certified copy of first amended Complaint in suit of Superior Court of the State of California, in and for the County of Los Angeles, entitled "Cinema Patents Company, Inc., a corporation, plaintiff, vs. William Horsley Film Laboratories, Inc., a corporation, defendants).

Defendants' Exhibit G, (patent to Frederick B. Thompson, numbered 1,587,051).

Dated at Los Angeles, California, this 13th day of April, 1932.

Loyd Wright  
Charles E. Millikan  
Frank L. A. Graham  
Attorneys for Appellee.

Service of the above Praecipe accepted and acknowledged this 13th day of April, 1932.

Herbert A. Huebner  
Ward D. Foster  
Attorneys for Appellant.

Stipulated that the above may be incorporated in the record

Ward D. Foster  
Herbert A. Huebner  
Attorneys for Appellant  
Frank L. A. Graham  
Atty. for Appellee.

[Endorsed]: Filed Apr. 16, 1932 R. S. Zimmerman  
Clerk by Theodore Hocke Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

## CLERK'S CERTIFICATE

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 147 pages, numbered from 1 to 147 inclusive, together with the book of exhibits under separate cover containing 95 pages of patents pursuant to stipulation dated Apr. 27, 1932 (printed in the foregoing record) to be the Transcript of Record on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation; bill of complaint; answer of defendant Columbia Pictures Corporation, including exhibits attached thereto; answer of defendant Wm. Horsley Film Laboratories, Inc., omitting "Exhibit A" and "Exhibit B" attached thereto; plaintiff's interrogatories and order re interrogatories; answer of defendant Columbia Pictures Corporation to interrogatories; answer of defendant Wm. Horsley Film Laboratories to interrogatories; notice of hearing of motion and motion for order referring cause to master and affidavit of M. J. Siegel in support of motion; order referring cause to master; stipulations continuing time for taking depositions; notice of taking depositions and order re same; condensed statement of evidence and order approving same; report of special master; ruling and exceptions to master's report; order adopting court's ruling on exceptions as findings of fact and conclusions of law; final decree; petition for appeal and order allowing appeal; assignment of errors; notice of lodg-

ment of statement of evidence; stipulation re printing of record; stipulation re exhibits; undertaking on appeal; praecipe and appellee's praecipe.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$                    and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of May in the year of Our Lord One Thousand Nine Hundred and Thirty-two, and of our Independence the One Hundred and Fifty-sixth.

R. S. ZIMMERMAN,

Clerk of the District Court of the United States of America, in and for the Southern District of California.

By

Deputy.

